Montana Legislative History

Chapter: 271 Session L: 2019

Bill Number: 325 Senate

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	N/A
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Business and Labor

Hearing Date(s):
April 5, 2019
April 9, 2019
(Executive Action)

Senate

Committee:
Business, Labor and Economic Affairs

Hearing Date(s):
March 19, 2019
March 22, 2019 (Executive Action)

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by: sg

Date: Feb. 23, 2024

Notes:

Bill Draft Number: LC0025
Bill Type - Number: SB 325
Short Title: Create the Montana Business Corporation Act
Primary Sponsor: Steve Fitzpatrick (R) SD 10
Chapter Number: 271

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 69

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/03/2019			
(S) Signed by Governor	05/02/2019			
(S) Transmitted to Governor	04/29/2019			
(H) Signed by Speaker	04/26/2019			
(S) Signed by President	04/26/2019			
(S) Revised Fiscal Note Printed	04/25/2019			
(S) Revised Fiscal Note Signed	04/24/2019			
(S) Revised Fiscal Note Received	04/24/2019			
(C) Printed - Enrolled Version Available	04/23/2019			
(S) Returned from Enrolling	04/23/2019			
(S) Revised Fiscal Note Requested	04/22/2019			
(S) Revised Fiscal Note Printed	04/17/2019			
(S) Sent to Enrolling	04/17/2019			
(C) Fiscal Note Unsigned	04/17/2019			
(H) Returned to Senate with Amendments	04/16/2019			
(H) 3rd Reading Concurred	04/16/2019	86	11	
(H) Scheduled for 3rd Reading	04/16/2019			
(S) Revised Fiscal Note Received	04/16/2019			
(C) Printed - New Version Available	04/15/2019			
(H) 2nd Reading Concurred as Amended	04/13/2019	71	29	
(H) 2nd Reading Motion to Amend Carried	04/13/2019	52	48	
(H) Scheduled for 2nd Reading	04/13/2019			
(H) Reconsidered Previous Action; Placed on 2nd Reading	04/12/2019	52	45	
(C) Printed - New Version Available	04/12/2019			
(S) Revised Fiscal Note Requested	04/12/2019			
(H) 2nd Reading Concurred as Amended	04/11/2019	75	25	
(H) 2nd Reading Motion to Amend Carried	04/11/2019	73	25	
(H) Scheduled for 2nd Reading	04/11/2019			
(H) Committee Report--Bill Concurred	04/09/2019			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred	04/09/2019	19	0	(H) Business and Labor

(H) Hearing	04/05/2019			(H) Business and Labor
(H) First Reading	03/30/2019			(H) Business and Labor
(H) Referred to Committee	03/29/2019			(H) Business and Labor
(S) Revised Fiscal Note Printed	03/29/2019			
(C) Fiscal Note Unsigned	03/29/2019			
(S) Transmitted to House	03/28/2019			
(S) 3rd Reading Passed	03/28/2019	46	3	
(S) Scheduled for 3rd Reading	03/28/2019			
(S) Revised Fiscal Note Received	03/28/2019			
(S) 2nd Reading Passed	03/27/2019	49	1	
(S) Scheduled for 2nd Reading	03/27/2019			
(S) Revised Fiscal Note Requested	03/25/2019			
(C) Printed - New Version Available	03/23/2019			
(S) Committee Report--Bill Passed as Amended	03/22/2019			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Passed as Amended	03/22/2019	9	1	(S) Business, Labor, and Economic Affairs
(S) Fiscal Note Printed	03/20/2019			
(S) Fiscal Note Signed	03/19/2019			
(S) Fiscal Note Received	03/19/2019			
(S) Hearing	03/19/2019			(S) Business, Labor, and Economic Affairs
(S) Referred to Committee	03/13/2019			(S) Business, Labor, and Economic Affairs
(C) Introduced Bill Text Available Electronically	03/12/2019			
(S) First Reading	03/12/2019			
(S) Fiscal Note Requested	03/12/2019			
(S) Introduced	03/12/2019			
(C) Draft Delivered to Requester	03/11/2019			
(C) Draft Ready for Delivery	03/11/2019			
(C) Executive Director Final Review	03/11/2019			
(C) Draft in Assembly	03/11/2019			
(C) Executive Director Review	03/11/2019			
(C) Bill Draft Text Available Electronically	03/11/2019			
(C) Draft in Final Drafter Review	03/11/2019			
(C) Draft in Input/Proofing	02/27/2019			
(C) Draft to Drafter - Edit Review	02/21/2019			
(C) Draft in Edit	02/05/2019			
(C) Draft in Legal Review	02/04/2019			
(C) Draft to Requester for Review	02/03/2019			
(C) Draft to Requester for Review	02/03/2019			
(C) Fiscal Note Probable	02/03/2019			
(C) Draft Request Received	07/24/2018			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Fitzpatrick	Steve	
Drafter	Walker	Jameson	
Primary Sponsor	Fitzpatrick	Steve	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Corporations/Partnerships/Associations		Simple	CORP
Revenue, State	Revenue	Simple	REVS
Rule Making		Simple	RUL

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: N
Session Law Ch. Number: 271
DEADLINE
Category: Revenue Bills
Transmittal Date: 04/01/2019
Return (with 2nd house amendments) Date: 04/16/2019

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-JUN-20	

AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112,

32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104, 33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 221] may be cited as the "Montana Business Corporation Act".

Section 2. Reservation of power to amend or repeal. The legislature has power to amend or repeal

all or part of [sections 1 through 221] at any time, and all domestic and foreign corporations subject to [sections 1 through 221] are governed by the amendment or repeal.

Section 3. Requirements for documents -- extrinsic facts. (1) A document must satisfy the requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by [sections 1 through 221] and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing by electronic transmission. The secretary of state may authorize exceptions to the requirement of filing documents by electronic transmission.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee

and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of [sections 1 through 221] except [sections 203 through 214] or [section 221]; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed document;

(ii) the registered office of any entity required in a filed document;

(iii) the registered agent of any entity required in a filed document;

(iv) the number of authorized shares and designation of each class or series of shares;

(v) the effective date of a filed document; and

(vi) any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a document that is a matter of public record and the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Section 4. Forms. (1) (a) The secretary of state may prescribe and furnish on request forms for:

(i) an application for a certificate of existence or certificate of registration;

(ii) a foreign corporation's registration statement;

(iii) a foreign corporation's statement of withdrawal;

(iv) a foreign corporation's transfer of registration statement; and

(v) the annual report.

(b) If the secretary of state requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by [sections 1 through 221], but their use is not mandatory.

Section 5. Filing -- service -- copying fees. (1) The secretary of state shall establish fees for:

(a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];

(b) issuing certificates and statements as required by [sections 1 through 26]; and

(c) copying and transmitting documents, priority handling, and responding to requests for information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

Section 6. Effective date -- filed document. (1) Except to the extent otherwise provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

(a) on the date and at the time of filing, as provided in [section 8(2)];

(b) on the date of filing and at the time specified in the document as its effective time if later than the time under subsection (1)(a);

(c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or

(d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(2) If a filed document does not specify the time zone or place at which a date or time or both are to be determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this state.

Section 7. Correcting filed document. (1) A document filed by the secretary of state pursuant to [sections 1 through 221] may be corrected if:

(a) the document contains an inaccuracy;

(b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

(c) the electronic transmission was defective.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the inaccuracy or defect to be corrected; and

(iii) correct the inaccuracy or defect; and

(b) by delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Section 8. Filing duty -- secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall return to the person who delivered the document for filing a copy of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within 10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not create a presumption that:

(a) the document does or does not conform to the requirements of [sections 1 through 221]; or

(b) the information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

Section 9. Appeal from secretary of state -- refusal to file document. (1) If the secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing may petition the district court of the first judicial district to compel its filing. The document and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 10. Evidentiary effect -- certified copy of filed document. A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

Section 11. Certificate of existence or registration. (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign

corporation.

(2) A certificate of existence sets forth:

(a) the domestic corporation's corporate name;

(b) that the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence of the domestic corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state;

(e) that articles of dissolution have not been filed;

(f) that the corporation is not administratively dissolved and a proceeding is not pending under [section 194]; and

(g) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) A certificate of registration sets forth:

(a) the foreign corporation's name used in this state;

(b) that the foreign corporation is registered to do business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the registration of the foreign corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state; and

(e) other facts of record in the office of the secretary of state that may be requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied on as conclusive evidence of the facts stated in the certificate.

Section 12. Penalty -- signing false document. (1) The execution of any document required to be filed with the secretary of state under [sections 1 through 26] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed

by the secretary of state under [sections 1 through 26].

Section 13. Powers. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by [sections 1 through 221].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 26], including establishing necessary fees.

Section 14. General definitions. For the purposes of [sections 1 through 221], unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in [section 28], all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary of state under any provision of [sections 1 through 221] that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under [sections 1 through 221] that restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of the entity means the document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Conspicuous" means written, displayed, or presented so that a reasonable person against whom the writing is to operate should have noticed it.

(5) "Corporation", "domestic corporation", "business corporation", or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under [sections 1 through 221].

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, and commercial delivery and, if authorized in accordance with [section 15], by

electronic transmission.

(7) "Distribution" means a direct or indirect transfer of cash or other property except a corporation's own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of:

(a) a payment of a dividend;

(b) a purchase, redemption, or other acquisition of shares;

(c) a distribution of indebtedness;

(d) a distribution in liquidation; or

(e) another form.

(8) "Document" means:

(a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of those instruments; or

(b) an electronic record.

(9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the law of this state.

(10) "Effective date", when referring to a document accepted for filing by the secretary of state, means the time and date determined in accordance with [section 6].

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(13) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) "Eligible interests" means interests or memberships.

(16) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) "Entity" includes:

(a) a domestic and foreign business corporation;

(b) a domestic and foreign nonprofit corporation;

(c) an estate;

(d) a trust;

(e) a domestic and foreign unincorporated entity; and

(f) a state, the United States, and a foreign government.

(18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including attorney fees.

(19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.

(22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.

(23) "Foreign registration statement" means the foreign registration statement described in [section 205].

(24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.

(25) "Governor" means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

(26) "Includes" and "including" denote a partial definition or a nonexclusive list.

(27) "Individual" means a natural person.

(28) "Interest" means either or both of the following rights under the organic law governing an

unincorporated entity:

(a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(29) "Interest holder" means a person who holds of record an interest.

(30) (a) "Interest holder liability" means:

(i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or eligible entity that is imposed on a person:

(A) solely by reason of the person's status as a shareholder, member, or interest holder; or

(B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders or categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

(ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

(b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subsection (30)(a) when the corporation or eligible entity incurs the liability.

(31) "Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

(32) "Means" denotes an exhaustive definition.

(33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(34) "Merger" means a transaction pursuant to [section 162].

(35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic record.

(36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

(37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(38) "Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

(39) "Person" includes an individual and an entity.

(40) "Principal office" means the office, whether in this state or out of this state, designated in the annual report or foreign registration statement as the place where the principal executive offices of a domestic or foreign corporation are located.

(41) (a) "Private organic rules" means:

(i) the bylaws of a domestic or foreign business or nonprofit corporation; or

(ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record, if any.

(b) When private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(43) (a) "Public organic record" means:

(i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

(ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates the unincorporated entity and is required to be filed.

(b) When a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(44) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the record date is fixed, the determination must be made as of the close of business at the principal office of the corporation on the record date.

(45) "Record shareholder" means:

(a) the person in whose name shares are registered in the records of the corporation; or

(b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to [section 73] on file with the corporation to the extent of the rights granted by the certificate.

(46) "Registered foreign corporation" means a foreign corporation registered to do business in this state pursuant to [sections 203 through 214].

(47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(48) "Share exchange" means a transaction pursuant to [section 163].

(49) "Shareholder" means a record shareholder.

(50) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation are divided.

(51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed signature; or

(b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, including an electronic signature in an electronic transmission.

(52) "State", when referring to a part of the United States, includes a state, commonwealth, or territory or insular possession of the United States and their agencies and governmental subdivisions.

(53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(54) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following:

(i) a domestic or foreign business or nonprofit corporation;

(ii) a series of a limited liability company or of another type of entity;

(iii) an estate;

(iv) a trust; or

(v) a state, the United States, or a foreign government.

(b) The term includes a general partnership, limited liability partnership, limited liability company, limited

partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(56) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(58) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or [sections 1 through 221] are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 221] to vote generally on the matter are for that purpose a single voting group.

(59) "Voting power" means the current power to vote in the election of directors.

(60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to [section 80(1)].

(61) "Writing" or "written" means any information in the form of a document.

Section 15. Notices and other communications. (1) A notice under [sections 1 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [sections 1 through 221] must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include:

(a) a newspaper of general circulation in the area where published;

(b) radio, television, or other form of public broadcast communication; or

(c) other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign

corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10). A corporation that files documents with the office of the secretary of state under [sections 1 through 221] is considered to have given its irrevocable consent to delivery of notices or other communications by the office of the secretary of state to the corporation by electronic transmission.

(5) Any consent under subsection (4) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

(a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with the consent; and

(b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or other person responsible for the giving of notice or other communications. However, the inadvertent failure to treat the inability as a revocation does not invalidate any meeting or other action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(b) it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under [section 215(4)];

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221], those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal act.

Section 16. Number of shareholders. (1) For purposes of [sections 1 through 221], the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; and

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of [sections 1 though 221], shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Section 17. Qualified director. (1) A qualified director is a director who, at the time action is to be taken under:

(a) [section 28(2)(f)], is not a director:

(i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply; or

(ii) who has a material relationship with any other person to whom the limitation or elimination would apply;

(b) [section 87], does not have:

(i) a material interest in the outcome of the proceeding; or

(ii) a material relationship with a person who has such an interest;

(c) [section 122 or 124]:

(i) is not a party to the proceeding;

(ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or disclaimer is challenged in the proceeding; and

(iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);

(d) [section 131] is not a director:

(i) as to whom the transaction is a director's conflicting interest transaction; or

(ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(e) [section 133] is not a director who:

(i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of another person; or

(ii) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(2) For purposes of this section:

(a) "material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(b) "material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(3) The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(a) nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(b) service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director; or

(c) with respect to action to be taken under [section 87], status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

Section 18. Householding. (1) A corporation has delivered written notice or any other report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(a) the corporation delivers one copy of the notice, report, or statement to the common address;

(b) the corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation

shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) is considered to have consented to receiving a single copy at the common address, provided that the notice of intention explains that consent may be revoked and the method for revoking.

Section 19. Definitions -- ratification of defective corporate actions. In [sections 19 through 26], the following definitions apply:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization; and

(b) an overissue.

(4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure would render the corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under [section 46] at the time of the issuance; or

(b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series (including shares issued upon exercise

of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to those shares) that were created or issued as a result of a defective corporate action and that:

(a) but for any failure of authorization would constitute valid shares; or

(b) cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with [sections 1 through 221], including as a result of ratification or validation under [sections 19 through 26].

(8) (a) "Validation effective time", with respect to any defective corporate action ratified under [sections 19 through 26], means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by [section 23] becomes effective in accordance with [section 15]; or

(ii) the time at which any articles of validation filed in accordance with [section 25] become effective.

(b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under [section 26] or otherwise unless ordered by the court.

Section 20. Defective corporate actions. (1) A defective corporate action is not void or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

(2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive means of ratifying or validating a defective corporate action, and the absence or failure of ratification in accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise or create a presumption that any corporate action is or was a defective corporate action or is void or voidable.

(3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued on:

(a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the authorization, designation, or creation of the shares.

Section 21. Ratification -- defective corporate actions. (1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

(a) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) that the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) the earlier of the date on which those persons first took action or the date on which they were purported to have been elected as the initial board of directors; and

(c) that the ratification of the election of the person or persons as the initial board of directors is approved.

(3) If any provision of [sections 1 through 221], the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party that is in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with [section 22].

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

Section 22. Action on ratification. (1) The quorum and voting requirements applicable to a ratifying action by the board of directors under [section 21(1)] are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(2) If the ratification of the defective corporate action requires approval by the shareholders under [section 21(3)] and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose or one of the purposes of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(a) either a copy of the action taken by the board of directors in accordance with [section 21(1)] or the information required by [section 21(1)(a) through (1)(d)]; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by [section 21(3)] must be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(4) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring ratification exceed the votes cast opposing ratification of the election at a meeting at which a quorum is present.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under [section 21(3)] (and without giving effect to any ratification of putative shares that becomes effective as a result of the vote) are neither entitled to vote nor counted for quorum purposes in a vote to approve the ratification of a defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by [section 21], approval of an amendment to the articles of incorporation under [sections 149

through 160] to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue is also required.

Section 23. Notice requirements. (1) Unless shareholder approval is required under [section 21(3)], prompt notice of an action taken under [section 21] must be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(a) the date of the action by the board of directors; and

(b) the date the defective corporate action was ratified, provided that notice may not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) either:

(i) a copy of the action taken by the board of directors in accordance with [section 21(1) or (2)]; or

(ii) the information required by [section 21(1)(a) through (1)(d) or (2)(a) through (2)(c)], as applicable; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under [section 21(3)] if notice is given in accordance with [section 22(2)].

(4) A notice required by this section may be given in any manner permitted by [section 15] and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

Section 24. Effect of ratification. From and after the validation effective time and without regard to the 120-day period during which a claim may be brought under [section 26]:

(1) each defective corporate action ratified in accordance with [section 21] may not be void or voidable as a result of the failure of authorization identified in the action taken under [section 21(1) or (2)] and is considered a valid corporate action effective as of the date of the defective corporate action;

(2) the issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under [section 21] may not be void or voidable, and such putative share or fraction of a putative share is considered an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) any corporate action taken subsequent to the defective corporate action ratified in accordance with [sections 19 through 26] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action are valid as of the time taken.

Section 25. Filings. (1) If the defective corporate action ratified under [sections 19 through 26] would have required under any other section of [sections 1 through 221] a filing in accordance with [sections 1 through 221], then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by [sections 1 through 221], the corporation shall file articles of validation in accordance with this section, and the articles of validation serve to amend or substitute for any other filing with respect to the defective corporate action required by [sections 1 through 221].

(2) The articles of validation must set forth:

(a) the defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization in respect of the defective corporate action;

(d) a statement that the defective corporate action was ratified in accordance with [section 21], including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

(e) the information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) if a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(b) if a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(iii) the date and time that the filing is considered to have become effective; or

(c) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under [section 21] would have required a filing under any other section of [sections 1 through 221], the articles of validation must set forth:

(i) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(ii) the date and time that the filing is considered to have become effective.

Section 26. Judicial proceedings -- validity of corporate actions. (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under [section 21], or any other person claiming to be substantially and adversely affected by a ratification under [section 21], the district court in the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may:

(a) determine the validity and effectiveness of any corporate action or defective corporate action;

(b) determine the validity and effectiveness of any ratification under [section 21];

(c) determine the validity of any putative shares; and

(d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations regarding matters it considers proper under the circumstances.

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days of the validation effective time.

Section 27. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Section 28. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 39];

(b) the number of shares the corporation is authorized to issue;

(c) the street and mailing addresses of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iv) a par value for authorized shares or classes of shares; or

(v) the imposition of interest holder liability on shareholders;

(c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law;

(e) a provision permitting or making obligatory indemnification of a director for liability as defined in [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

(i) receipt of a financial benefit to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or its shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law; and

(f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any or one or more classes or categories of business opportunities before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer:

(i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131]; and

(ii) may be limited by the authorizing action of the board.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 221].

(4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable

outside the articles of incorporation in accordance with [section 3(11)].

(5) As used in this section, "related person" has the meaning specified in [section 129].

Section 29. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Section 30. Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly and severally liable for all liabilities created while so acting.

Section 31. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect initial directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Section 32. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles

of incorporation.

(3) The bylaws may contain one or both of the following provisions:

(a) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to the procedures or conditions provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to procedures and conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record date precedes its adoption.

(4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical, and orderly process.

Section 33. Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

Section 34. Forum selection. (1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be brought in that other court of this state, notwithstanding that the other court of this state is not specified in the provision, and in any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) For the purposes of this section, "internal corporate claim" means:

(a) any claim that is based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity;

(b) any derivative action or proceeding brought on behalf of the corporation;

(c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the articles of incorporation or bylaws; or

(d) any action asserting a claim governed by the internal affairs doctrine that is not included in this subsection (4).

Section 35. Purposes. (1) Every corporation incorporated under [sections 1 through 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other statute.

Section 36. General powers. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221] within or outside this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

Section 37. Emergency powers. (1) In anticipation of or during an emergency as provided in subsection (4), the board of directors of a corporation may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors must be given only to those directors whom it is practicable to reach and may be given in any practicable manner; and

(b) one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

Section 38. Lack of power to act. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act;

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal

representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) in a proceeding by the attorney general under [section 197].

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Section 39. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of similar meaning in another language; and

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 35] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated in this state that is not administratively dissolved. If the corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law of this state;

(c) the name of a foreign corporation registered to do business in this state or an alternate name adopted by a foreign corporation registered to do business in this state because its corporate name is unavailable;

(d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name adopted by a foreign nonprofit corporation registered to do business in this state because its real name is unavailable;

(f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved. If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies

to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(g) the name of a foreign unincorporated entity registered to do business in this state or an alternate name adopted by a foreign unincorporated entity registered to do business in this state because its real name is unavailable; and

(h) any assumed business name, trademark, or service mark reserved or registered with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation or unincorporated entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability partnership is incorporated or authorized to transact business in this state and the proposed user corporation, domestic filing entity, or limited liability partnership:

(a) has merged with the other corporation, filing entity, or limited liability partnership;

(b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

(c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing entity, or limited liability partnership; or

(d) has obtained written permission from the other corporation, filing entity, or limited liability partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) [Sections 1 through 221] do not control the use of fictitious names.

Section 40. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not available, by delivering an

application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Section 41. Registered name. (1) A foreign corporation may register its corporate name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 39(2)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state or country and date of its incorporation, and a brief description of the nature of the business that is to be conducted in this state.

(3) The name is registered for the applicant's exclusive use on the effective date of the application and for the remainder of the calendar year unless renewed.

(4) A foreign corporation whose name registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application that complies with the requirements of subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose name registration is effective may:

(a) register to do business as a foreign corporation under the registered name if it complies with [section 39(1)(b)]; or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic corporation is incorporated or the foreign corporation registers to do business under that name.

Section 42. Registered office and agent -- domestic and registered foreign corporations. (1) Each

corporation shall continuously maintain in this state a registered office and a registered agent in compliance with Title 35, chapter 7.

(2) As used in [sections 42 through 45], "corporation" means both a domestic corporation and a registered foreign corporation.

Section 43. Change -- registered office -- registered agent. A corporation may change its registered office or registered agent in compliance with Title 35, chapter 7.

Section 44. Resignation -- registered agent. A registered agent may resign as agent for a corporation in compliance with Title 35, chapter 7.

Section 45. Service on corporation. (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(3) If process, notice, or demand cannot be served on a corporation pursuant to subsection (1) or (2) or is to be served on a registered foreign corporation that has withdrawn its registration pursuant to [section 209 or 211] or the registration of which has been terminated pursuant to [section 213], then the secretary of state is an agent of the corporation on whom process, notice, or demand may be served. Service of any process, notice, or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection at the earliest of:

(a) the date the corporation receives the process, notice, or demand;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after the process, notice, or demand is deposited in the United States mail by the secretary of state.

(4) This section does not prescribe the only means or necessarily the required means of serving a corporation.

Section 46. Authorized shares. (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and, before the issuance of shares of a class or series, describe the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

(a) one or more classes or series of shares that together have full voting rights; and

(b) one or more classes or series of shares, which may be the same class, classes, or series as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent otherwise provided by [sections 1 through 221];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or on the occurrence of a specified event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) at prices and in amounts specified or determined in accordance with a formula;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including

distributions on the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(6) The description of the preferences, rights, and limitations of classes or series of shares in subsection (3) is not exhaustive.

Section 47. Terms of class or series -- determination by board of directors. (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(a) classify any unissued shares into one or more classes or into one or more series within a class;

(b) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under [section 46], of:

(a) any class of shares before the issuance of any shares of that class; or

(b) any series within a class before the issuance of any shares of that series.

(3) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (2).

Section 48. Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to [section 60].

(3) At all times that shares of the corporation are outstanding, one or more shares that together have full voting rights and one or more shares that together are entitled to receive the net assets of the corporation

upon dissolution must be outstanding.

Section 49. Fractional shares. (1) A corporation may issue fractions of a share or in lieu of doing so may:

(a) pay in cash the value of fractions of a share;

(b) issue scrip in registered or bearer form entitling the holder to receive a full share on surrendering enough scrip to equal a full share; or

(c) arrange for disposition of fractional shares by the holders of those shares.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by [section 55(2)].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition, including that:

(a) the scrip will become void if not exchanged for full shares before a specified date; and

(b) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Section 50. Subscription for shares -- before incorporation. (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of cash or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the

subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation delivers a written demand for payment to the subscriber.

Section 51. Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders at a meeting at which a quorum consisting of a majority, or a greater number the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists if:

(i) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and

(ii) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(b) In this subsection (6):

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares is the greater of:

(A) the voting power of the shares to be issued; or

(B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

Section 52. Liability of shareholders. (1) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except:

(a) to the extent provided in a provision of the articles of incorporation permitted by [section 28(2)(b)(v)]; and

(b) that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

Section 53. Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issue;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which may not be retroactive. If the board of directors does not fix the record date for determining

shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

Section 54. Share rights -- options -- warrants -- awards. (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(a) the terms and conditions upon which the rights, options, or warrants are issued; and

(b) the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue the rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(2) The terms and conditions of the rights, options, or warrants may include restrictions or conditions that:

(a) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or

(b) invalidate or void the rights, options, or warrants held by any person or transferee described in subsection (2)(a).

(3) The board of directors may authorize one or more officers to:

(a) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of rights, options, warrants, or other equity compensation awards and the terms of the rights, options, warrants, or awards to be received by the recipients, provided that an officer may not use this authority to designate the officer or any other person the board of directors may specify as a recipient of those rights, options, warrants, or other equity compensation awards.

Section 55. Certificates -- form -- content. (1) Shares may be, but need not be, represented by certificates. Unless [sections 1 through 221] or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize:

(a) the preferences, rights, and limitations applicable to each class and series;

(b) any variations in preferences, rights, and limitations among the holders of the same class or series; and

(c) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed by two officers designated in the bylaws.

(5) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Section 56. Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by [section 55(2) and (3)] and, if applicable, [section 57].

Section 57. Restriction on transfer of shares. (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation or may impose restrictions on, including the alteration or elimination of, the application of [section 201]. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement

or voted in favor of the restriction.

(2) A restriction described in subsection (1) is valid and enforceable against a shareholder or a transferee of the shareholder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by [section 56(2)]. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction described in subsection (1) is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law; or

(c) for any other reasonable purpose.

(4) A restriction described in subsection (1) may:

(a) obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 58. Preemptive rights -- shareholder. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares, except to the extent the articles of incorporation provide that right.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar effect, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right,

to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A preemptive right may be waived by a shareholder. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for cash.

(d) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 59. Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Section 60. Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7), the effect of a distribution under subsection (3) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(8) This section does not apply to distributions in liquidation under [sections 184 through 202].

Section 61. Annual meeting. (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted by [section 64], a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors must be elected.

(2) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Section 62. Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or of the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under [section 63 or 67], the record date for determining shareholders entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on which the demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (1)(b) have been delivered to the corporation.

(3) Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by [section 65(3)] may be conducted at a special meeting of shareholders.

Section 63. Court-ordered meeting. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of one or more shareholders who signed a demand for a special meeting valid under [section 62] if:

(i) notice of the special meeting was not given within 30 days after the first day on which the requisite number of demands was delivered to the corporation; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the shares represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) For purposes of subsection (1)(a), "shareholder" means a record shareholder, a beneficial

shareholder, and an unrestricted voting trust beneficial owner.

Section 64. Action without meeting. (1) Action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, be signed by all the shareholders entitled to vote on the action, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) The articles of incorporation may provide that any action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action to be taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to [section 78], directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(3) If not otherwise fixed under [section 67] and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under [section 67] and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent is effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

(4) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described in that manner in any document. Unless the articles of incorporation, the bylaws, or a

resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action have been delivered to the corporation.

(5) If [sections 1 through 221] require that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(6) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(7) The notice requirements in subsections (5) and (6) may not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements does not invalidate actions taken by written consent. However, this subsection may not be considered to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time period.

Section 65. Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to [section 69] for holders of any class or series of shares, the notice to the holders of that class or series of shares must describe the means of remote communication to be used. The notice must include the record date for

determining the shareholders entitled to vote at the meeting if that date is different from the record date for determining shareholders entitled to notice of the meeting. Unless [sections 1 through 221] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(2) Unless [sections 1 through 221] or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [section 63] or [section 67], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 67], however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

Section 66. Waiver of notice. (1) A shareholder may waive any notice required by [sections 1 through 221] or the articles of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

Section 67. Record date for meeting. (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders and may not be retroactive.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(5) The record dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Section 68. Conduct of meeting. (1) At each meeting of shareholders, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of that provision, by the board of directors.

(2) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

(3) Rules adopted for the meeting and the conduct of the meeting must be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted on. If no announcement is made, the polls are considered to have closed on the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes and no revocations or changes to ballots, proxies, or votes may be accepted.

Section 69. Remote participation -- shareholder's meetings. (1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes the participation for that class or series. Participation as a shareholder by means of remote communication is subject to guidelines and procedures the board of directors adopts and must be in conformity with subsection (2).

(2) Shareholders participating in a shareholders' meeting by means of remote communication are considered present and may vote at the meeting if the corporation has implemented reasonable measures:

(a) to verify that each person participating remotely as a shareholder is a shareholder; and

(b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

Section 70. Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and, within each voting group, by class or series of shares and must show the address of and number of shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 216(3)], to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any

shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Section 71. Voting entitlements of shares. (1) Except as provided in subsections (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(5) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

Section 72. Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; and

(e) a party to a voting agreement created under [section 81].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares

without certificates.

(8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 73. Shares held by intermediaries and nominees. (1) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder does not have those rights or privileges.

(2) The procedure must specify:

(a) the types of intermediaries or nominees to which it applies;

(b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;

(c) the manner in which the procedure is selected, which must include that the beneficial ownership certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective;

(f) requirements for notice to the corporation with respect to the arrangement; and

(g) the form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

Section 74. Acceptance of votes -- other instruments. (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or

proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder

demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under [section 79], the inspector of election also may request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

Section 75. Quorum and voting requirements -- voting groups. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

(5) The election of directors is governed by [section 78].

(6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that provision.

Section 76. Action by single and multiple voting groups. (1) If the articles of incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that matter is taken when it is voted on by that voting group as provided in [section 75].

(2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting

groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different times.

Section 77. Modifying quorum or voting requirements. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Section 78. Voting for directors -- cumulative voting. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for that right.

(3) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors" or words of similar meaning means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Section 79. Inspectors of election. (1) A corporation that has a class of equity securities registered

pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (2) and may rely on information provided by those and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(2) The inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting;

(c) determine the validity of proxy appointments and ballots;

(d) count the votes; and

(e) make a written report of the results.

(3) In performing their duties, the inspectors may examine:

(a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

(b) any envelope or related writing submitted with the proxy appointment forms;

(c) any ballots;

(d) any evidence or other information specified in [section 74]; and

(e) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(4) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (2) specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that the information is relevant and reliable.

(5) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under [section 92] or other judicial proceeding.

Section 80. Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that became effective prior to [the effective date of sections 1 through 221] remains governed by the statute concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

Section 81. Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 80].

(2) A voting agreement created under this section is specifically enforceable.

Section 82. Shareholder agreements. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in [section 60];

(c) establishes who may be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section is:

(a) as set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser

is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement.

Section 83. Definitions -- derivative proceedings. In [sections 83 through 90] the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 90], in the right of a foreign corporation.

(2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 84. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Section 85. Demand. A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made on the corporation to take suitable action; and

(2) 90 days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

Section 86. Stay of proceedings. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

Section 87. Dismissal. (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith, after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be made by:

(a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors constitute a quorum.

(3) If a derivative proceeding is commenced after a determination has been made rejecting a demand

by a shareholder, the complaint must allege with particularity facts establishing either:

(a) that a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(b) that the requirements of subsection (1) have not been met.

(4) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not, the corporation has the burden of proving that the requirements of subsection (1) have been met.

(5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

Section 88. Discontinuance -- settlement. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class or series of shareholders, the court shall direct that notice be given to the shareholders affected.

Section 89. Payment of expenses. On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper if it finds that the pleading, motion, or other paper:

(a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Section 90. Applicability to foreign corporations. In any derivative proceeding in the right of a foreign

corporation, the matters covered by [sections 83 through 90] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

Section 91. Shareholder action to appoint custodian or receiver. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(2) The court:

(a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held;

(b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(c) has jurisdiction over the corporation and all of its property, wherever located.

(3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(4) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(a) a custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(b) a receiver:

(i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale if authorized by the court; and

(ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation to be paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 92. Judicial determination -- corporate offices -- review of elections and shareholder votes. (1) Upon application of or in a proceeding commenced by a person specified in subsection (2), the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may determine:

(a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(b) the right of an individual to hold the office of director or officer of the corporation;

(c) the result or validity of any vote by the shareholders of the corporation;

(d) the right of a director to membership on a committee of the board of directors; and

(e) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the following persons:

(a) the corporation;

(b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(c) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of the person's right to the office or membership;

(d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case

who is seeking a determination of the person's right to the office; and

(e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

(3) In connection with any application or proceeding under subsection (1), the following must be named as defendants unless the person made the application or commenced the proceeding:

(a) the corporation;

(b) any individual whose right to office or membership on a committee of the board of directors is contested;

(c) any individual claiming the office or membership at issue; and

(d) any person claiming a right covered by subsection (1)(e) that is at issue.

(4) In connection with any application or proceeding under subsection (1), service of process may be made on each of the persons specified in subsection (3) by either:

(a) service of process on the corporation addressed to the person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(b) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(5) When service of process is made on a person other than the corporation by service on the corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly provide written notice of the service, together with copies of all process and the application or complaint, to the person at the person's last-known residence or business address or as permitted by statute of this state or by rule of the applicable court.

(6) In connection with any application or proceeding under subsection (1), the court shall dispose of the application or proceeding on an expedited basis and also may:

(a) order additional or further notice the court considers proper under the circumstances;

(b) order that additional persons be joined as parties to the proceeding if the court determines that joinder is necessary for a just adjudication of matters before the court;

(c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or otherwise;

(d) appoint a master to conduct an election or meeting;

(e) enter temporary, preliminary, or permanent injunctive relief;

(f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(g) order any other relief the court determines is equitable, just, and proper.

(7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

(8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court that existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

Section 93. Board of directors -- requirements -- functions. (1) Except as may be provided in an agreement authorized under [section 82], each corporation must have a board of directors.

(2) Except as may be provided in an agreement authorized under [section 82] and subject to any limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed by or under the direction of and subject to the oversight of the board of directors.

Section 94. Qualifications of directors. (1) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(2) A requirement that is based on a past, prospective, or current action or expression of opinion by a nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not a permissible qualification under this section. However, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(3) A director need not be a resident of this state or a shareholder unless the articles of incorporation or bylaws prescribe those requirements.

(4) A qualification for nomination for director prescribed before a person's nomination applies to the

person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to the person with respect to the nomination.

(5) A qualification for director prescribed before a director has been elected or appointed applies only at the time an individual becomes a director or during a director's term. A qualification prescribed after a director has been elected or appointed does not apply to that director before the end of that director's term.

Section 95. Directors -- number -- election. (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or unless their terms are staggered under [section 98].

Section 96. Election of directors -- certain classes or series of shares. If the articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes of the election of directors.

Section 97. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the extent:

(a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

(b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

Section 98. Staggered terms for directors. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

Section 99. Resignation of directors. (1) A director may resign at any time by delivering a written notice of resignation to the board of directors or its chair or to the secretary.

(2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

Section 100. Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number.

However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

Section 101. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) considering the director's course of conduct and the inadequacy of other available remedies, removal or other relief would be in the best interests of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

Section 102. Vacancy -- board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it

is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 103. Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 104. Meetings. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

Section 105. Action without meeting. (1) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described in that manner in any document.

Section 106. Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Section 107. Waiver of notice. (1) A director may waive any notice required by [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

Section 108. Quorum and voting. (1) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in [sections 1 through 221].

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or

transacting business at the meeting;

(b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 109. Committees of board. (1) Unless [sections 1 through 221], the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

(3) [Sections 104 through 108] apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under [section 93] to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by shareholders;

(c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;

(d) adopt, amend, or repeal bylaws;

(e) approve a plan of merger, including plans not requiring shareholder approval;

(f) authorize or approve reacquisition of shares except according to a formula or method prescribed by the board of directors; or

(g) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board

of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

Section 110. Submission of matters for shareholder vote. A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

Section 111. Standards of conduct for directors. (1) Each member of the board of directors, when discharging the duties of a director, shall act:

(a) in good faith; and

(b) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a board committee, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(4) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a) or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(5) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) A director is entitled to rely, in accordance with subsection (4) or (5), on:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

Section 112. Standards of liability for directors. (1) A director may not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(a) no defense interposed by the director precludes liability based on:

(i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];

(ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section 132]; or

(iii) the protection afforded by [section 133]; and

(b) the challenged conduct consisted or was the result of:

(i) action not in good faith; or

(ii) a decision:

(A) that the director did not reasonably believe to be in the best interests of the corporation; or

(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the

challenged conduct and:

(A) the relationship, domination, or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) after a reasonable expectation of an effect on the director's judgment has been established, the director may not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for an inquiry; or

(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(2) The party seeking to hold the director liable:

(a) for money damages also has the burden of establishing that:

(i) harm to the corporation or its shareholders has been suffered; and

(ii) the harm suffered was proximately caused by the director's challenged conduct; or

(b) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) Nothing in this section:

(a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional interest under [section 130];

(c) affects any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States; or

(d) invalidates or otherwise limits the business judgment rule under the common law.

Section 113. Director's liability for unlawful distributions. (1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes that when taking the action the director did not comply with [section 111].

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

(a) contribution from every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

(3) A proceeding to enforce:

(a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after the date:

(i) on which the effect of the distribution was measured under [section 60(5) or (7)];

(ii) as of which the violation of [section 60(1)] occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) on which the distribution of assets to shareholders under [section 192(1)] was made; or

(b) contribution or recoupment under subsection (2) is barred unless it is commenced within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

Section 114. Officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to an officer responsibility for maintaining and

authenticating the records of the corporation required to be kept under [section 215(1)].

(4) The same individual may simultaneously hold more than one office in a corporation.

Section 115. Functions of officers. Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

Section 116. Standards of conduct for officers. (1) An officer, when performing in an official capacity, has the duty to act:

(a) in good faith;

(b) with the care that a person in a like position would reasonably exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation:

(a) to inform the superior officer to whom or the board of directors or the board committee to which the officer reports of information about the affairs of the corporation known to the officer within the scope of the officer's functions and known to the officer to be material to the superior officer, board, or committee; and

(b) to inform the officer's superior officer, another appropriate person within the corporation, or the board of directors, or a board committee of any actual or probable material violation of law involving the corporation or any material breach of duty to the corporation by an officer, employee, or agent of the corporation that the officer believes has occurred or is likely to occur.

(3) In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(a) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained

by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence.

(4) An officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability will depend in each instance on applicable law, including those principles of [section 112] that have relevance.

Section 117. Resignation and removal of officers. (1) An officer may resign at any time by delivering a written notice to the corporation. A resignation is effective as provided in [section 15(9)] unless the notice provides for delayed effectiveness, including effectiveness determined on a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

(2) An officer may be removed at any time with or without cause by:

(a) the board of directors;

(b) the appointing officer unless the bylaws or the board of directors provides otherwise; or

(c) any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Section 118. Contract rights of officers. (1) The election or appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Section 119. Definitions -- indemnification and advance for expenses. For the purposes of [sections 119 through 128], unless the context clearly requires otherwise, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or

other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or who, while a director of the corporation, is or was serving at the corporation's request as a director of another entity or trustee of an employee benefit plan. A director is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of a director.

(3) "Liability" means the obligation to pay a judgment, a settlement, a penalty, a fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding, including attorney fees.

(4) "Officer" means an individual who is or was an officer of a corporation or who, while an officer of the corporation, is or was serving at the corporation's request as an officer of another entity or trustee of an employee benefit plan. An officer is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of an officer.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an officer as contemplated in [section 125], the office in a corporation held by the officer.

(b) The term does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan, or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Section 120. Permissible indemnification. (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against

liability incurred in the proceeding if:

(a) (i) the director acted in good faith; and

(ii) the director reasonably believed:

(A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(B) in all other cases, that the conduct was at least not opposed to the best interests of the corporation; and

(iii) in the case of a criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful; or

(b) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by [section 28(2)(e)].

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under [section 123(1)(c)], a corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1); or

(b) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

Section 121. Mandatory indemnification. A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against expenses incurred by the director in connection with the proceeding.

Section 122. Advance for expenses. (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a director if the director delivers to the corporation a signed, written undertaking of the director to repay any funds advanced if:

(a) the director is not entitled to mandatory indemnification under [section 121]; and

(b) it is ultimately determined under [section 123] or [section 124] that the director is not entitled to indemnification.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section must be made:

(a) by the board of directors in the following manner:

(i) if there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or

(ii) by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of all the qualified directors; or

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (3)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Section 123. Court-ordered indemnification and advance for expenses. (1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification

under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to indemnify the director or to advance expenses to the director even if, in either case, the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c), it may also order the corporation to pay the director's expenses incurred to obtain court-ordered indemnification or advance for expenses.

Section 124. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under [section 120] unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in [section 120].

(2) The determination must be made:

(a) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of all the qualified directors;

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (2)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is

not a qualified director may not be voted on the determination.

(3) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection (2)(b)(ii).

Section 125. Indemnification of officers. (1) A corporation may indemnify and advance expenses under [sections 119 through 128] to an officer who is a party to a proceeding because the person is an officer:

(a) to the same extent as a director; and

(b) if the person is an officer but not a director, to any further extent provided by the articles of incorporation or the bylaws or by a resolution adopted or a contract approved by the board of directors or shareholders, except for:

(i) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) liability arising out of conduct that constitutes:

(A) receipt by the officer of a financial benefit to which the officer is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders; or

(C) an intentional violation of criminal law.

(2) Subsection (1)(b) applies to an officer who is also a director if the officer is made a party to the proceeding based on an act or omission solely as an officer.

(3) An officer who is not a director is entitled to mandatory indemnification under [section 121] and may apply to a court under [section 123] for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections.

Section 126. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation or a joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless

of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under [sections 119 through 128].

Section 127. Variation by corporate action -- application. (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with [section 120] or advance funds to pay for or reimburse expenses in accordance with [section 122]. An obligatory provision under this section satisfies the requirements for authorization referred to in [section 122(3)] and [section 124(3)]. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with [section 122] to the fullest extent permitted by law unless the provision expressly provides otherwise.

(2) A right of indemnification or to advances for expenses created by [sections 119 through 128] or under subsection (1) of this section and in effect at the time of an act or omission may not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders adopted after the occurrence of the act or omission unless, in the case of a right created under subsection (1), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision pursuant to subsection (1) may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise expressly provided. A provision for indemnification or advance for expenses in the articles of incorporation or bylaws or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party that exists at the time the merger takes effect is governed by [section 167(1)(d)].

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to [sections 119 through 128].

(5) [Sections 119 through 128] do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when the director or officer is not a party.

(6) [Sections 119 through 128] do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Section 128. Exclusivity. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by [sections 119 through 128].

Section 129. Definitions -- director's conflicting interest transactions. For the purposes of [sections 129 through 132], unless otherwise specified, the following definitions apply:

(1) "Control" or "controlled by" means:

(a) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(b) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(a) to which, at the relevant time, the director is a party;

(b) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(c) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of [section 130(2)(c)], that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(a) fair in terms of the director's dealings with the corporation; and

(b) comparable to what might have been obtainable in an arm's-length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(a) an individual's spouse;

(b) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of an individual or of an individual's spouse;

(c) a natural person living in the same home as an individual;

(d) an entity, other than the corporation or an entity controlled by the corporation, controlled by an individual or any person specified in subsections (5)(a) through (5)(c);

(e) a domestic or foreign:

(A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which an individual is a director;

(B) unincorporated entity of which an individual is a general partner or a member of the governing body; or

(C) individual, trust, or estate for whom or of which an individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) a person that is or an entity that is controlled by an employer of an individual.

(6) "Relevant time" means:

(a) the time at which directors' action respecting the transaction is taken in compliance with [section 131]; or

(b) if the transaction is not brought before the board of directors or a committee for action under [section 131], the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(a) the existence and nature of the director's conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that a director free of that conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Section 130. Judicial action. (1) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief or give rise to an award of

damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(2) A director's conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the grounds that the director has an interest respecting the transaction if:

(a) directors' action respecting the transaction was taken in compliance with [section 131] at any time;

(b) shareholders' action respecting the transaction was taken in compliance with [section 132] at any time; or

(c) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Section 131. Directors' action. (1) Directors' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(a)] if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by the qualified directors or after modified disclosure in compliance with subsection (2), provided that:

(a) the qualified directors have deliberated and voted outside the presence of and without participation by any other director; and

(b) if the action has been taken by a board committee, all members of the committee were qualified directors and either:

(i) the committee was composed of all the qualified directors on the board of directors; or

(ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(2) Notwithstanding subsection (1), when a transaction is a director's conflicting interest transaction only because a related person of the director is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a

professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(a) all information required to be disclosed that is not violative of the duty, obligation, or rule;

(b) the existence and nature of the director's conflicting interest; and

(c) the nature of the conflicted director's duty not to disclose the confidential information.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the board committee constitutes a quorum for purposes of action that complies with this section.

(4) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a board committee, in which directors who are not qualified directors may participate.

Section 132. Shareholders' action. (1) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(b)] if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(a) notice to shareholders describing the action to be taken respecting the transaction;

(b) provision to the corporation of the information referred to in subsection (2); and

(c) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote must be determined as of the record date for notice of the meeting.

(2) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (3), and of the identity of the holders of those shares.

(3) For purposes of this section:

(a) "holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) "qualified shares" means all shares entitled to be voted with respect to the transaction except shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows or under

subsection (2) is informed are held by:

(i) a director who has a conflicting interest respecting the transaction; or

(ii) a related person of the director, excluding a person described in [section 129(5)(f)].

(4) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (5), shareholders' action that otherwise complies with this section is not affected by the presence of holders of or by the voting of shares that are not qualified shares.

(5) If a shareholders' vote does not comply with subsection (1) solely because of a director's failure to comply with subsection (2) and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take any action respecting the transaction and the director, and may give any effect to the shareholders' vote, that the court considers appropriate in the circumstances.

(6) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which shares that are not qualified shares may participate.

Section 133. Business opportunities. (1) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(a) before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 131]; or

(ii) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 132], in either case as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in [section 129], the

director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(b) the duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and, if required, made effective by action of qualified directors in accordance with [section 28(2)(f)].

(2) In any proceeding seeking equitable relief or other remedies based on an alleged improper pursuit or taking advantage of a business opportunity by a director or officer directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (1)(a)(ii) before pursuing or taking advantage of the opportunity does not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

Section 134. Definitions -- domestication -- conversion. As used in [sections 134 through 148] the following definitions apply:

(1) "Conversion" means a transaction pursuant to [sections 143 through 148].

(2) "Converted entity" means the converting entity as it continues in existence after a conversion.

(3) "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion pursuant to [section 145] or the foreign eligible entity that approves a conversion pursuant to the organic law of the eligible entity.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to [section 139] or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(6) "Domestication" means a transaction pursuant to [sections 138 through 142].

(7) "Protected agreement" means:

(a) a document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before the enactment date;

(b) an agreement that is binding on a domestic corporation or eligible entity immediately before the

enactment date;

(c) the articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before the enactment date; or

(d) an agreement that is binding on any of the shareholders, members, interest holders, directors, or other governors of a domestic corporation or eligible entity, in their official capacities, immediately before the enactment date. For purposes of [sections 138 and 143] and this subsection (7), "enactment date" means the earliest date on which the laws of this state authorized a transaction having the effect of a domestication or a conversion, as applicable.

Section 135. Excluded transactions. (1) [Sections 134 through 148] may not be used to effect a transaction that:

(a) converts or domesticates a company organized on the mutual principle to one organized on the basis of share ownership;

(b) converts or domesticates banks and trust companies regulated under Title 32, chapter 1;

(c) converts or domesticates building and loan associations regulated under Title 32, chapter 2;

(d) converts or domesticates credit unions regulated under Title 32, chapter 3; or

(e) converts or domesticates insurance companies regulated under Title 33.

(2) The conversion of a domestic corporation to a domestic benefit corporation is governed by Title 35, chapter 1, part 14, and not by [sections 134 through 148].

Section 136. Required approvals. If a domestic or foreign corporation or eligible entity may not be a party to a merger without the approval of the attorney general, the state auditor, the department of administration, or the public service commission and the applicable statutes or regulations do not specifically deal with transactions under [sections 134 through 148] but do require approval by one of those agencies or officials for mergers, a corporation or eligible entity may not be a party to a transaction under [sections 134 through 148] without the prior approval of that agency or official.

Section 137. Relationship to other laws. A transaction effected under [sections 134 through 148] does not create or impair a right, duty, or obligation of a person under the laws of this state other than [sections 134

through 148] relating to a change in control, business combination, control-share acquisition, or a similar transaction involving a domesticating or converting domestic corporation unless the approval of the plan of domestication or conversion is by a vote of the shareholders or the board of directors that would be sufficient to create or impair the right, duty, or obligation directly under that law.

Section 138. Domestication. (1) By complying with the provisions of [sections 138 through 142] applicable to foreign corporations, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of [sections 138 through 142], a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) The plan of domestication must include:

(a) the name of the domesticating corporation;

(b) the name and jurisdiction of formation of the domesticated corporation;

(c) the manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination;

(d) the proposed articles of incorporation and bylaws of the domesticated corporation; and

(e) the other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11]).

(6) If a protected agreement of a domestic domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the first time the provision is amended after the enactment date.

Section 139. Action on plan of domestication. In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication must be adopted in the following manner:

(1) The plan of domestication must first be adopted by the board of directors.

(2) (a) The plan of domestication must then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of domestication by the shareholders or for the effectiveness of the plan of domestication.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of domestication requires the approval of a majority of the votes entitled to be cast on the plan and, except as provided in subsection (6), the approval of a majority of the votes entitled to be cast on the plan by any class or series of shares entitled to vote as a separate group on the plan. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights in subsection (5) of any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under [section 152] if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation would become subject to interest holder liability, approval of the plan of domestication must require the signing in connection with the domestication, by each affected shareholder, of a separate written consent to become subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce that interest holder liability.

Section 140. Articles of domestication -- effectiveness. (1) After:

(a) a plan of domestication of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a foreign corporation that is a domesticating corporation has approved a domestication as required under its organic law, articles of domestication must be signed by the domesticating corporation. The articles must set forth:

(i) the name of the domesticating corporation and its jurisdiction of formation;

(ii) the name of the domesticated corporation and its jurisdiction of formation; and

(iii) if the domesticating corporation is:

(A) a domestic corporation, a statement that the plan of domestication was approved in accordance with [sections 134 through 148]; or

(B) a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(2) If the domesticated corporation is a domestic corporation, the articles of domestication must have attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28]. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(3) The articles of domestication must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the

domestication becomes effective on the later of:

(a) the date and time provided by the organic law of the domesticated corporation; or

(b) the date the articles of domestication are effective.

(5) If the domesticating corporation is a foreign corporation that is registered to do business in this state under [sections 203 through 214], its registration statement is canceled automatically when the domestication becomes effective.

Section 141. Amendment of plan of domestication -- abandonment. (1) A plan of domestication of a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination to be received by any of the shareholders of the domesticating corporation under the plan;

(ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective except changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in the plan; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the secretary of state for filing but before the articles of domestication have become effective, articles of abandonment signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles

of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the domesticating corporation;

(b) the date on which the articles of domestication were filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

Section 142. Effect of domestication. (1) When a domestication becomes effective:

(a) all property owned by and every contract right possessed by the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and liabilities of the domesticated corporation;

(c) the name of the domesticated corporation may be but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) the articles of incorporation and bylaws of the domesticated corporation become effective;

(e) the shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) the domesticated corporation is:

(i) incorporated under and subject to the organic law of the domesticated corporation;

(ii) the same corporation without interruption as the domesticating corporation; and

(iii) considered to have been incorporated on the date the domesticating corporation was originally incorporated.

(2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections

171 through 183].

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability with respect to the domesticating corporation before the domestication becomes effective is as follows:

(a) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(b) The provisions of the organic law of the domesticating corporation continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(4) A shareholder who becomes subject to interest holder liability with respect to the domesticated corporation as a result of the domestication has that interest holder liability only with respect to interest holder liabilities that arise after the domestication becomes effective.

(5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

Section 143. Conversion. (1) By complying with [sections 143 through 148], a domestic corporation may become:

(a) a domestic eligible entity; or

(b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

(2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through 148]. For purposes of applying [sections 143 through 148]:

(a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a business corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting corporation in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger until the first time the provision is amended after the enactment date.

Section 144. Plan of conversion. (1) A domestic corporation may convert to a domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan of conversion must include:

(a) the name of the converting corporation;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination;

(d) the other terms and conditions of the conversion; and

(e) the full text that will be in effect immediately after the conversion becomes effective of the organic rules of the converted entity, which must be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

Section 145. Action on plan of conversion. In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors.

(2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or for the effectiveness of the plan of conversion.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is

to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in writing as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the interest holder liability.

Section 146. Articles of conversion -- effectiveness. (1) After:

(a) a plan of conversion of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, articles of conversion must be signed by the converting entity and must:

(i) state the name, jurisdiction of formation, and type of entity of the converting entity;

(ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

(iii) if the converting entity is:

(A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections 143 through 148]; or

(B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with its organic law; or

(II) a domestic eligible entity the organic law of which does not provide for approval of the conversion, state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through

148]; and

(iv) if the converted entity is:

(A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached the public organic record of the converted entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

(B) a domestic limited liability partnership, have attached the filing required to become a limited liability partnership.

(2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of [section 28], except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that the public organic record does not need to be signed.

(3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the conversion itself becomes effective on the later of:

(a) the date and time provided by the organic law of that eligible entity; or

(b) the date the articles of conversion become effective.

(5) Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing satisfies the requirements of both the other organic law and this section.

(6) If the converting entity is a foreign eligible entity that is registered to do business in this state under a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign qualification is canceled automatically on the effective date of its conversion.

Section 147. Amendment of plan of conversion -- abandonment. (1) A plan of conversion of a converting entity that is a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it

may be amended; or

(b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination to be received by any of the shareholders of the converting corporation under the plan;

(ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes effective except changes that do not require approval of the eligible interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in any material respect.

(2) After a plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by [sections 143 through 148] and before the articles of conversion become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of state for filing and before the articles of conversion become effective, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the converting entity;

(b) the date on which the articles of conversion were filed by the secretary of state; and

(c) a statement that the conversion has been abandoned in accordance with this section.

Section 148. Effect of conversion. (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting entity remain the property and contract rights of the converted entity without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and

other liabilities of the converted entity;

(c) the name of the converted entity may be but need not be substituted for the name of the converting entity in any pending action or proceeding;

(d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) if the converted entity is a nonfiling entity, its private organic rules become effective;

(f) if the converted entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity; and

(h) the converted entity is:

(i) incorporated or organized under and subject to the organic law of the converted entity;

(ii) the same entity without interruption as the converting entity; and

(iii) considered to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability with respect to that converting eligible entity before the conversion becomes effective is as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(c) The eligible interest holder has the rights of contribution from other persons that are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

(5) A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after the conversion inures to the converted entity.

(8) A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

Section 149. Authority to amend. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision

in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Section 150. Amendment before issuance of shares. If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

Section 151. Amendment by board of directors and shareholders. If a corporation has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

(1) The proposed amendment must first be adopted by the board of directors.

(2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or for the effectiveness of the amendment.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting

group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability, the terms and conditions of the new interest holder liability:

(a) are substantially identical to those of the existing interest holder liability; or

(b) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce that interest holder liability.

(7) For purposes of [section 157] and subsection (6) of this section, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if:

(a) the person did not have interest holder liability before the amendment becomes effective; or

(b) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

Section 152. Voting on amendments by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment would:

(a) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(c) change the rights, preferences, or limitations of all or part of the shares of the class;

(d) change the shares of all or part of the class into a different number of shares of the same class;

(e) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect

to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(g) limit or deny an existing preemptive right of all or part of the shares of the class; or

(h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to [section 151(3)].

(4) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

Section 153. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) if the corporation has only one class of shares outstanding:

(a) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) to delete a class of shares from the articles of incorporation as a result of the operation of [section 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder approval.

Section 154. Articles of amendment. (1) After an amendment to the articles of incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

(a) the name of the corporation;

(b) the text of each amendment adopted or the information required by [section 3(11)(e)];

(c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section 3(11)(e)];

(d) the date of each amendment's adoption; and

(e) if an amendment:

(i) was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval was not required;

(ii) required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

(iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

(2) Articles of amendment take effect on the effective date determined in accordance with [section 6].

Section 155. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(2) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in [section 151].

(3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) a statement that the restated articles consolidate all amendments into a single document; and

(d) if a new amendment is included in the restated articles, the statements required under [section 154] with respect to the new amendment.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(5) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the statements required by subsection (3)(d).

Section 156. Amendment pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 157. Effect of amendment. (1) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability with respect to the corporation as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect to interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder liability of a shareholder who had interest holder liability with respect to the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the articles of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

Section 158. Authority to amend. (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power

exclusively to the shareholders in whole or part; or

(b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(3) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

Section 159. Bylaw increasing quorum or voting requirement for directors. (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise; or

(b) if adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Section 160. Bylaw provisions relating to election of directors. (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the votes;

(b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the date that

is the earlier of:

(i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

(ii) the date on which an individual is selected by the board of directors to fill the office held by the director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

(iii) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise;

(b) if adopted by the board of directors, by the board of directors or the shareholders.

Section 161. Definitions -- mergers and share exchanges. As used in [sections 161 through 168], the following definitions apply:

(1) "Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

(3) "New interest holder liability" means interest holder liability of a person resulting from a merger or

share exchange that is:

(a) with respect to an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or

(b) with respect to the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:

(i) the person did not have interest holder liability immediately before the merger or share exchange became effective; or

(ii) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(5) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one or more other corporations or eligible entities are merged.

Section 162. Merger. (1) By complying with [sections 161 through 168]:

(a) one or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

(b) two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

(2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity, and the merger may then be effected as provided in the other provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

(a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders,

shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of merger must include:

(a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

(b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property, or any combination;

(e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record; and

(f) any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic rules of the party.

(5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(7) A plan of merger may be amended only with the consent of each party to the merger except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger;

(ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic or foreign nonprofit corporation, or unincorporated entity; or

(iii) any other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

Section 163. Share exchange. (1) By complying with [sections 161 through 168]:

(a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange; or

(b) all of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange.

(2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that corporation or other entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes

of applying [sections 161 through 168]:

(a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of share exchange must include:

(a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests;

(b) the terms and conditions of the share exchange;

(c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; and

(d) any other provisions required by the organic law governing the acquired entity or its articles of incorporation or organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired entity; or

(ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

Section 164. Action on plan of merger or share exchange. In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be adopted in the following manner:

(1) The plan of merger or share exchange must first be adopted by the board of directors.

(2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their shares to the offeror in response to the offer unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or for the effectiveness of the plan of merger or share exchange.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or

eligible entity.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) Subject to subsection (7), separate voting by voting groups is required:

(a) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; or

(ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under [section 152];

(b) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share exchange:

(a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

(b) will not effect a substantive business combination.

(8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) the corporation will survive the merger;

(b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

(c) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the effective date of the merger; and

(d) the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under [section 51(6)].

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domestic corporation:

(a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and

(b) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

(10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of merger or share exchange is not required if:

(a) the plan of merger or share exchange expressly:

(i) permits or requires the merger or share exchange to be effected under this subsection (10); and

(ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f);

(b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

(c) the offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in

subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subsection (10)(h);

(d) the offer remains open for at least 10 days;

(e) the offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) the following shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168] and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) shares purchased by the offeror in accordance with the offer;

(ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of them; and

(iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible interests in the offeror, parent, or subsidiary;

(g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration described in this subsection (10)(h).

(11) As used in subsection (10):

(a) "offer" means the offer referred to in subsection (10)(b);

(b) "offeror" means the person making the offer;

(c) "parent" of an entity means a person that owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(d) shares tendered in response to the offer are considered to have been "purchased" in accordance with the offer at the earliest time that:

(i) the offeror has irrevocably accepted those shares for payment; and

(ii) either:

(A) in the case of shares represented by certificates, the offeror or the offeror's designated depository or other agent has physically received the certificates representing those shares; or

(B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "wholly owned subsidiary" of a person means an entity of which or in which that person owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(12) Unless the articles of incorporation provide otherwise:

(a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

Section 165. Merger between parent and subsidiary or between subsidiaries. (1) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

(a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power of each class and series of the outstanding shares or eligible interests that have voting power; or

(b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary.

(2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary's shareholders that the merger has become effective. The notice must include:

(a) a copy of the plan of merger; or

(b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be furnished, upon request and at no cost, to any shareholder of any party to the merger.

(3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers generally.

Section 166. Articles of merger or share exchange. (1) After a plan of merger has been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)]. The articles must set forth:

(a) the name, jurisdiction of formation, and type of entity of each party to the merger;

(b) the name, jurisdiction of formation, and type of entity of the survivor;

(c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended or if a new domestic corporation is created as a result of the merger:

(i) the amendments to the survivor's articles of incorporation; or

(ii) the articles of incorporation of the new corporation;

(d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or if a new domestic eligible entity is created as a result of the merger:

(i) the amendments to the public organic record of the survivor; or

(ii) the public organic record of the new eligible entity;

(e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and the articles of incorporation;

(f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) as to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized as required by its organic law;

(h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or [section 162(3)]; and

(i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required to become a limited liability partnership, as an attachment.

(2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be signed by the acquired entity and the acquiring entity. The articles must set forth:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible entity that is the acquiring entity; and

(c) a statement that the plan of share exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of shares or eligible interests included in the exchange; and

(ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section 163(3)].

(3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5), the merger or share exchange takes effect on the effective date determined in accordance with [section 6].

(5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created by the merger is the survivor, the merger itself becomes effective on the later of:

(a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become effective; or

(b) the date the articles of merger take effect.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both that organic law and this section.

Section 167. Effect of merger or share exchange. (1) When a merger becomes effective:

(a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases;

(c) all property owned by and every contract right possessed by each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

(e) the name of the survivor may be but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger;

(g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective;

(h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are converted, and the former holders of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign corporation;

(i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and

immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor; and

(j) if the survivor exists before the merger:

(i) all the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

(ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

(iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under the organic law governing the acquired entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability with respect to an entity as a result of a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of the party or acquired entity:

(i) that were exchanged in the merger or share exchange;

(ii) that were cancelled in the merger; or

(iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, the following provisions apply:

(A) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(B) The provisions of the organic law governing any entity for which the person had that prior interest

holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(C) The person has the rights of contribution from other persons that are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(D) The person may not by reason of that prior interest holder liability have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on that interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of the merger is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under [sections 171 through 183].

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the laws of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

Section 168. Abandonment of merger or share exchange. (1) After a plan of merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business corporation that is a party to the plan without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment signed by all the parties that signed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

(c) a statement that the merger or share exchange has been abandoned in accordance with this section.

Section 169. Disposition of assets not requiring shareholder approval. No approval of the shareholders is required, unless the articles of incorporation provide otherwise:

(1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course

of business;

(3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Section 170. Shareholder approval of certain dispositions. (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation is conclusively held to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least:

(a) 25% of total assets at the end of the most recently completed fiscal year; and

(b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing operations, in each case for the most recently completed fiscal year.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval by the shareholders of a disposition or for the effectiveness of the disposition.

(4) If a disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a

description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this section.

Section 171. Definitions -- appraisal rights. For the purposes of [sections 171 through 183], the following definitions apply:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive of another person. For purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

(2) "Beneficial owner" means any person who directly, or indirectly through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares. However, a member of a national securities exchange is not considered a beneficial owner of securities held directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed is held to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation that are

beneficially owned by any member of the group.

(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

(4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(5) "Fair value" means the value of the corporation's shares determined:

(a) immediately before the effectiveness of the corporate action to which the shareholder objects;

(b) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to [section 172(1)(d)].

(6) "Interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) "Interested person" means a person or an affiliate of a person who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

(a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(c) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders, other than:

(i) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section 131]; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director or governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

(8) "Interested transaction" means a corporate action described in [section 172(1)], other than a merger pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Section 172. Right to appraisal. (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 164] or would be required but for the provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) the corporation is a subsidiary and the merger is governed by [section 165];

(b) consummation of a share exchange to which the corporation is a party the shares of which will be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series if:

(i) under the terms of the corporate action approved by the shareholders, the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are to be distributed to shareholders in cash:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of distribution; and

(ii) the disposition of assets is not an interested transaction;

(d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share created;

(e) any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of the board of directors;

(f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication;

(g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143]; or

(h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 143].

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;

(ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more than 10% of those shares; or

(iii) issued by an open-end management investment company registered with the United States securities and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) must be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant to [section 164(10)], the date of the offer; or

(ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for the holders of any class or series of shares:

(i) who are required by the terms of the corporate action requiring appraisal rights to accept for those shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the corporate action becomes effective; or

(ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189 and 190]:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of the distribution.

(d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) no limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143] or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

(b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the

amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within 1 year after the effective date of the amendment if the action would otherwise afford appraisal rights.

Section 173. Assertion of rights -- nominees -- beneficial shareholders. (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(a) submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in [section 176(2)(b)(ii)]; and

(b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Section 174. Notice of appraisal rights. (1) When any corporate action specified in [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders

of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in [section 176].

(3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the shareholders pursuant to [section 64]:

(a) written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of [sections 171 through 183]; and

(b) written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of [sections 171 through 183].

(4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (2) must be accompanied by:

(a) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of the notice, an income statement for that year, and a cash flow statement for that year, provided that if those financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) the latest interim financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action.

Section 175. Notice of intent to demand payment -- consequences of voting or consenting. (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to

demand payment if the proposed action is effected; and

(b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the proposed action.

(2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor of the proposed action with respect to that class or series of shares.

(3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not tender or cause or permit to be tendered any shares of that class or series in response to the offer.

(4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to payment under [sections 171 through 183].

Section 176. Appraisal notice and form. (1) If a corporate action requiring appraisal rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2), or (3)]. In the case of a merger under [section 165], the parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be delivered no earlier than the date the corporate action specified in [section 172(1)] became effective and no later than 10 days after that date and must:

(a) supply a form that:

(i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action; and

(ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or

consent to the transaction as to the class or series of shares for which appraisal is sought;

(b) state:

(i) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which may not be earlier than the date by which the corporation must receive the required form under subsection (2)(b)(ii);

(ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than 60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under [section 177] must be received, which must be within 20 days after the date specified in subsection (2)(b)(ii) of this section; and

(c) be accompanied by a copy of [sections 171 through 183].

Section 177. Perfection of rights -- right to withdraw. (1) A shareholder who receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)]. In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the

appraisal notice pursuant to [section 176(2)(b)(v). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in [section 176(2)], is not entitled to payment under [sections 171 through 183].

Section 178. Payment. (1) Except as provided in [section 179], within 30 days after the form required by [section 176(2)(b)(ii)] is due, the corporation shall pay in cash to those shareholders who complied with [section 177(1)] the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) must be accompanied by:

(a) (i) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year or, if those annual financial statements are not reasonably available, reasonably equivalent financial information; and

(ii) the latest interim financial statements of the corporation, if any;

(b) a statement of the corporation's estimate of the fair value of the shares, which must equal or exceed the corporation's estimate given pursuant to [section 176(2)(b)(iii)]; and

(c) a statement that shareholders described in subsection (1) of this section have the right to demand further payment under [section 180] and that if any shareholder does not do so within the time period specified in [section 180(2)], the shareholder is considered to have accepted the payment under subsection (1) of this section in full satisfaction of the corporation's obligations under [sections 171 through 183].

Section 179. After-acquired shares. (1) A corporation may elect to withhold payment required by [section 178] from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to [section 176(2)(a)].

(2) If the corporation elected to withhold payment under subsection (1) of this section, it shall, within 30 days after the form required by [section 176(2)(b)(ii)] is due, notify all shareholders who are described in subsection (1) of this section:

(a) of the information required by [section 178(2)(a)];

(b) of the corporation's estimate of fair value pursuant to [section 178(2)(b)];

(c) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under [section 180];

(d) that those shareholders who wish to accept the offer shall notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(e) that those shareholders who do not satisfy the requirements for demanding appraisal under [section 180] are considered to have accepted the corporation's offer.

(3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in subsection (2)(e).

Section 180. Procedure if shareholder dissatisfied with payment or offer. (1) A shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179] who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

Section 181. Judicial appraisal of shares -- court action. (1) If a shareholder makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a proceeding within 60 days

after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180], plus interest.

(2) The corporation shall commence the proceeding in the district court of the county in which its principal office is located or, if its principal office is not located in this state, in the first judicial district.

(3) The corporation shall make all shareholders, regardless of whether they are residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for the shares, plus interest; or

(b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under [section 179].

Section 182. Court costs -- expenses. (1) The court in an appraisal proceeding commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(2) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds

the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

(b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180], any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit.

Section 183. Other remedies limited. (1) The legality of a proposed or completed corporate action described in [section 172(1)] may not be contested, and the corporate action may not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) does not apply to a corporate action that:

(a) was not authorized and approved in accordance with the applicable provisions of:

(i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169 and 170];

(ii) the articles of incorporation or bylaws; or

(iii) the resolution of the board of directors authorizing the corporate action;

(b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) is an interested transaction unless it has been recommended by the board of directors in the manner provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as if the interested transaction were a director's conflicting interest transaction; or

(d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom

notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Section 184. Dissolution by incorporators or initial directors. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(i) that none of the corporation's shares has been issued; or

(ii) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

Section 185. Dissolution by board of directors and shareholders. (1) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution unless:

(i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by

shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

Section 186. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date that dissolution was authorized; and

(c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(2) The articles of dissolution take effect on the effective date determined in accordance with [section 6]. A corporation is dissolved on the effective date of its articles of dissolution.

(3) For purposes of [sections 184 through 192], "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Section 187. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days after its effective date.

(2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of

directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(g) The articles of revocation of dissolution take effect on the effective date determined in accordance with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.

(h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

Section 188. Effect of dissolution. (1) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) making distributions of its remaining assets among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities;

(c) subject its directors or officers to standards of conduct different from those prescribed in [sections 93 through 133];

(d) change:

(i) quorum or voting requirements for its board of directors or shareholders;

(ii) provisions for selection, resignation, or removal of its directors or officers or both; or

(iii) provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the corporation.

(3) A distribution in liquidation under this section may be made only by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

Section 189. Known claims against dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 190. Other claims against dissolved corporations. (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) be:

(i) published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located; or

(ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation's website;

(b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the first publication date of the notice:

(a) a claimant who was not given written notice under [section 189];

(b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

Section 191. Court proceedings. (1) A dissolved corporation that has published a notice under [section 190] may file an application with the district court of the county where its principal office is located or, if its principal office is not located in this state, of the first judicial district for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [section 190(3)].

(2) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and those claims may not be enforced against a shareholder who received assets in liquidation.

Section 192. Director duties. (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment of or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191]

may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are barred or satisfied under [sections 189 through 191].

Section 193. Grounds for administrative dissolution. The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within 120 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

Section 194. Procedure for and effect of administrative dissolution. (1) On or before September 1 of each year, the secretary of state shall compile a list of corporations for which one or more grounds exist under [section 193] for dissolving a corporation, and the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any

business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Section 195. Reinstatement following administrative dissolution. (1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) state that the corporation's name satisfies the requirements of [section 39].

(2) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state and related fees and penalties.

(3) If the secretary of state determines that the application contains the information, documents, and fees required by subsections (1) and (2) and that the information, documents, and fees are complete and correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Section 196. Appeal from denial of reinstatement. (1) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under [section 45] with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district

within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Section 197. Grounds for judicial dissolution. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

or

(e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of the shares.

(3) For the purposes of this section:

(a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) the term "shareholder" in subsection (2) means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Section 198. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under [section 201] and accompanied by a copy of [section 201].

Section 199. Receivership or custodianship. (1) Unless an election to purchase has been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) the receiver:

(A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale; and

(B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state;

(ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(b) The receiver or custodian has other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

Section 200. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 197] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance with [sections 189 and 190].

Section 201. Election to purchase in lieu of dissolution. (1) Unless the transfer is altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and number of shares owned by the petitioner and the name of and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares on the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or another date the court finds appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase on terms and conditions the court finds appropriate, which may include payment of the purchase price in installments when necessary in the interests of equity, provision for security to ensure payment of the purchase price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes or series as far as practicable and may direct that holders of a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the order becomes final.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

Section 202. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred

to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person or the person's representative that amount.

Section 203. Foreign corporations -- governing law. (1) The law of the jurisdiction of formation of a foreign corporation governs:

(a) the internal affairs of the foreign corporation; and

(b) the interest holder liability of its shareholders.

(2) A foreign corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

(3) Registration of a foreign corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic corporation may not engage in or exercise in this state.

Section 204. Registration to do business in this state. (1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) Except as provided in subsection (4), the failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to register to do business as required under [section 207(4)] is voidable by the state, the contracting state agency, or the contracting political subdivision.

(5) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

(6) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through

214].

Section 205. Foreign registration statement. To register to do business in this state, a foreign corporation shall deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the foreign corporation and state:

(1) the corporate name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(2) the foreign corporation's jurisdiction of formation;

(3) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers;

(6) a brief description of the nature of its business to be conducted in this state; and

(7) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

Section 206. Amendment of foreign registration statement. A registered foreign corporation shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its jurisdiction of formation unless its registration is determined to have been withdrawn under [section 210] or transferred under [section 212]; or

(3) an address required by [section 205(3)].

Section 207. Activities not constituting doing business. (1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not in the course of repeated transactions of a similar nature; and

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

(4) A foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must register to do business under [sections 203 through 214] before entering into the contract. This subsection does not apply to contracts for goods fully prepared or services fully performed out of state for delivery or use in this state.

Section 208. Noncomplying name of foreign corporation. (1) A foreign corporation whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the purpose of doing

business in this state, an alternate name that complies with [section 39] by filing a foreign registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212] setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do business in this state with an alternate name, a foreign corporation shall do business in this state under:

(a) the alternate name;

(b) the foreign corporation's name, with the addition of its jurisdiction of formation; or

(c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

(2) If a registered foreign corporation changes its name after registration to a name that does not comply with [section 39], it may not do business in this state until it complies with subsection (1) of this section by amending its registration statement to adopt an alternate name that complies with [section 39].

Section 209. Withdrawal of registration of registered foreign corporation. (1) A registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

(a) the name of the foreign corporation and its jurisdiction of formation;

(b) that the foreign corporation is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign corporation revokes the authority of its registered agent in this state;

(d) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(e) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(f) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be

made as provided in [section 45].

Section 210. Withdrawal upon domestication or conversion to certain domestic entities. A registered foreign corporation that domesticates to a domestic business corporation or converts to a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership is considered to have withdrawn its registration on the effective date of that event.

Section 211. Withdrawal upon dissolution or conversion to nonfiling entities. (1) A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic or foreign nonfiling entity and must state:

(a) in the case of a foreign corporation that has completed winding up:

(i) its name and jurisdiction of formation;

(ii) that the foreign corporation withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iii) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(iv) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(v) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation; or

(b) in the case of a foreign corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting foreign corporation and its jurisdiction of formation;

(ii) the type of the nonfiling entity to which it has converted and its name and jurisdiction of formation;

(iii) that it withdraws its registration to do business in this state and revokes the authority of its registered

agent to accept service on its behalf;

(iv) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(v) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(vi) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

Section 212. Transfer of registration. (1) If a registered foreign corporation merges into a nonregistered foreign corporation or converts to a foreign corporation required to register with the secretary of state to do business in this state, the foreign corporation shall deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or converted foreign corporation and must state:

(a) the name of the registered foreign corporation and its jurisdiction of formation before the merger or conversion;

(b) the name of the surviving or converted foreign corporation and its jurisdiction of formation after the merger or conversion and, if the name does not comply with [section 39], an alternate name adopted pursuant to [section 208]; and

(c) the following information regarding the surviving or converted foreign corporation after the merger or conversion:

(i) the street and mailing addresses of the principal office of the foreign corporation and, if the law of the foreign corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) the street and mailing addresses of the foreign corporation's registered office in this state and the

name of its registered agent at that office.

(2) On the effective date of a transfer of registration statement as determined in accordance with [section 6], the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign corporation into which it has merged or to which it has been converted.

Section 213. Administrative termination of registration. (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within 120 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) On or before September 1 of each year, the secretary of state shall compile a list of registered foreign corporations for which one or more grounds exist under subsection (1) for terminating its registration and shall serve the registered foreign corporation with written notice of the determination under [section 45].

(3) If the registered foreign corporation does not correct each ground for termination or demonstrate to the reasonable satisfaction of the secretary of state that each ground for termination determined by the secretary of state does not exist within 60 days after the notice is delivered, the secretary of state may terminate the registration of a registered foreign corporation by issuing a certificate of termination. The certificate of termination must state the effective date of the termination, which must be not less than 60 days after the secretary of state delivers the notice as prescribed in subsection (2)(b).

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination.

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do

business in this state may be made as provided in [section 45].

Section 214. Action by attorney general. The attorney general may maintain an action to enjoin a foreign corporation from doing business in this state in violation of [sections 1 through 221].

Section 215. Corporate records. (1) A corporation shall maintain the following records:

(a) its articles of incorporation as currently in effect;

(b) any notices to shareholders referred to in [section 3(11)(e)] specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in [section 3(11)(e)];

(c) its bylaws as currently in effect;

(d) all written communications within the past 3 years to shareholders generally;

(e) minutes of all meetings of and records of all actions taken without a meeting by its shareholders, its board of directors, and board committees established under [section 109];

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 221].

(2) A corporation shall maintain all annual financial statements prepared for the corporation for its last 3 fiscal years or any shorter period of existence and any audit or other reports with respect to those financial statements.

(3) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(4) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the address of and the number and class or series of shares held by each shareholder. Nothing in this subsection requires the corporation to include in the record the electronic mail address or other electronic contact information of a shareholder.

(5) A corporation shall maintain the records specified in this section in a manner that allows them to be made available for inspection within a reasonable time.

Section 216. Inspection rights of shareholders. (1) A shareholder of a corporation is entitled to inspect

and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 215(1)], excluding minutes of meetings of and records of actions taken without a meeting by the corporation's board of directors and board committees established under [section 109], if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) the financial statements of the corporation maintained in accordance with [section 215(2)];

(b) accounting records of the corporation;

(c) excerpts from minutes of any meeting of or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with [section 215(1)]; and

(d) the record of shareholders maintained in accordance with [section 215(4)].

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) the shareholder's demand is made in good faith and for a proper purpose;

(b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) the records are directly connected with the shareholder's purpose.

(4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (2).

(5) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different from the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made the information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide this information does not affect the validity of action taken at the meeting.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's

articles of incorporation or bylaws.

(7) This section does not affect:

(a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of production of records described in subsection (2) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (3) of this section.

(8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 217. Scope of inspection right. (1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under [section 216].

(2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records under [section 216] by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under [section 216(2)(d)] by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(4) The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of those costs.

Section 218. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with [section 216(1)] to inspect and copy any records required by that section to be available for inspection, the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder who complies with [section 216(2)] to inspect and copy the records required by that section, the shareholder, if the shareholder also complies

with [section 216(3)], may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under [section 216(2)], it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

(a) a reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or

(b) required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

Section 219. Inspection rights of directors. (1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

Section 220. Financial statements for shareholders. (1) Upon the written request of a shareholder, a corporation shall deliver or make available to the requesting shareholder by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the corporation for

which annual financial statements have been prepared. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for the specified period, the corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported on by a public accountant, the report must also be delivered or made available to the requesting shareholder.

(2) A corporation shall deliver or make available and provide written notice of availability of the financial statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a written request to the corporation.

(3) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(4) Notwithstanding the provisions of subsections (1) through (3):

(a) as a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of the financial statements; and

(b) the corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

(5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (2) within 5 business days of delivery of the request to the corporation:

(a) The requesting shareholder may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(b) If the court orders delivery of or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(c) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden

of demonstrating that the restrictions proposed by the corporation were reasonable.

(d) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(e) If the court orders delivery of or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

Section 221. Annual report for secretary of state. (1) Each domestic corporation shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the corporation;

(b) the street and mailing address of its registered office and the name of its registered agent at that office in this state;

(c) the street and mailing address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(b) the foreign corporation's jurisdiction of formation;

(c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that

jurisdiction, the street and mailing addresses of that office;

(d) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(e) the names and business addresses of its directors and principal officers; and

(f) a brief description of the nature of its business conducted in this state.

(3) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15 of subsequent years.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing. The corrected report must be filed by April 15 to be considered timely filed.

Section 222. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate

access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational

policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider

for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity~~, as defined in 35-1-113,~~ that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 223. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation -- application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or the officer's agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation~~ in 35-1-216~~;

(iii) the information required by 35-7-105(1);

(iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development

firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 224. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ Title 35, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana."

Section 225. Section 20-5-320, MCA, is amended to read:

"20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval

by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for

educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

Section 226. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure -- rulemaking authority. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited

liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in ~~35-1-310~~ [section 39].

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state."

Section 227. Section 32-1-112, MCA, is amended to read:

"32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of ~~Title 35, chapter 1,~~ [sections 1 through 221] apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with ~~Title 35, chapter 1~~ [sections 1 through 221].

(2) The provisions of [sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216] ~~35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10,~~ do not apply to banks."

Section 228. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in ~~Title 35, chapter 1~~ [sections 1 through 221]. The articles of incorporation must set forth:

(a) the information required by ~~35-1-216(1)~~ [section 28(1)];

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in ~~35-1-216(2)~~ [section 28(2)].

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 229. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in ~~Title 35, chapter 1, part 11~~ [sections 215 through 221]."

Section 230. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock -- rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss

must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity~~, as defined in 35-1-113,~~ that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 231. Section 33-3-103, MCA, is amended to read:

"33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935~~ [sections 184 through 188] apply to the voluntary dissolution of a domestic insurer."

Section 232. Section 33-3-215, MCA, is amended to read:

"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8,~~ [sections 171 through 183] as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its

policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13."

Section 233. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution. (1) At least 60 days before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-931~~ [section 184], the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required ~~by 35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the

secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 234. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under ~~Title 35, chapter 1, part 9, or~~ Title 35, chapter 2, part 7, or [sections 184 through 202] apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 235. Section 33-3-603, MCA, is amended to read:

"33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under ~~35-1-934 or~~ 35-2-724 or [section 187], the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 236. Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide

administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners, including electronically if required by the commissioner, and completed in accordance with instructions provided by the national association of insurance commissioners and the national association of insurance commissioners' accounting practices and procedures manual.

(5) All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at the time of licensure.

(6) (a) The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.

(b) Each risk retention group shall disclose the determinations of independence to the commissioner annually.

(c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.

(ii) A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's

immediate family, or any business with which the person is affiliated:

(A) has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group, compensation or payment of any item of value that accounts for either 5% of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;

(B) has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or

(C) has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.

(7) (a) A material service provider contract with a risk retention group or its renewal:

(i) may not exceed 5 years;

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of

financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of:

(i) the integrity of the financial statements;

(ii) the board's compliance with legal and regulatory requirements; and

(iii) the qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(d) discuss policies with respect to risk assessment and risk management;

(e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(f) review with the independent auditor any audit problems or difficulties and management's response;

(g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(h) require the external auditor to rotate the lead or coordinating audit partner having primary

responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and

(i) report regularly to the board of directors.

(11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.

(b) For the purposes of this subsection (11), the information must include:

(i) the process by which the directors are elected by the owner or the insureds;

(ii) qualification standards, responsibilities, and compensation for directors;

(iii) director access to management and, as necessary and appropriate, to independent advisors;

(iv) director orientation and continuing education;

(v) management succession policies and procedures; and

(vi) annual board performance evaluation policies and procedures.

(12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.

(b) The code must address:

(i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ director's conflicting interest transactions as defined in [section 129];

(ii) confidentiality;

(iii) fair dealing;

(iv) protection and proper use of risk retention group assets;

(v) compliance with all applicable laws, rules, and regulations; and

(vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

Section 237. Section 33-12-104, MCA, is amended to read:

"33-12-104. Authorization of investments by board of directors. (1) An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in ~~35-1-418~~ [section 111]."

Section 238. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or

revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license

in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member, employee, officer, director, or stockholder of a business entity who is acting as an insurance producer in this state has obtained a license;

(e) (i) with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority~~ registration under ~~35-1-1312~~ [section 11] or filed articles of incorporation under ~~35-1-220~~ [section 29].

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 239. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first ~~obtains from~~ registers with the secretary of state ~~a certificate of authority~~ to transact business in this state as a foreign corporation under ~~35-1-1028~~ [section 204].

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or

members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment

to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain~~,~~ at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

Section 240. Section 35-1-1403, MCA, is amended to read:

"35-1-1403. Purpose. (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under ~~35-1-114~~ [section 35] and any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with

subsection (2).

(2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote."

Section 241. Section 35-1-1406, MCA, is amended to read:

"35-1-1406. Benefit corporation governance -- liability. (1) A director of a public benefit corporation shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or group referred to in this subsection (2) over any other factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with this part is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

Section 242. Section 35-1-1407, MCA, is amended to read:

"35-1-1407. Conversion to benefit corporation. (1) A corporation may become a benefit corporation under this part by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if the conversion is approved by the other entity by at least the minimum status vote."

Section 243. Section 35-1-1408, MCA, is amended to read:

"35-1-1408. Termination -- reorganization -- other actions affecting benefit corporation. (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in ~~35-1-827~~ [section 172]."

Section 244. Section 35-2-826, MCA, is amended to read:

"35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under ~~35-1-309, 35-1-311,~~ 35-2-306, ~~or~~ 35-2-307, [section 40], or [section 41];

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 245. Section 35-4-503, MCA, is amended to read:

"35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in ~~Title 35, chapter 6~~ [sections 193 through 196]."

Section 246. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service

of process. (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments or a true copy certified by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under ~~35-1-1028~~ [section 205] and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in the certificate. Service of process, when made upon the agent, is valid service on the business trust."

Section 247. Section 35-6-101, MCA, is amended to read:

"35-6-101. Applicability to corporations presently in default. (1) The secretary of state may initiate procedures consistent with this chapter to dissolve nonprofit corporations organized under Title 35, chapters 2 and 3 ~~that have been in default prior to July 1, 1977~~.

(2) Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections 1 through 221] is governed by [sections 193 through 196].

(3) As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized under Title 35, chapters 4 and 9, or [sections 1 through 221]."

Section 248. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution -- grounds. (1) Any domestic corporation organized under Title 35,

chapters 2 and 3, ~~whether for profit or not for profit,~~ may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 249. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution -- procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or~~ 35-2-729~~, whichever is appropriate,~~ is applicable to liquidate the property and assets if necessary."

Section 250. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through 35-1-943 or~~ 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405;

and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 251. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited

partnership is governed by ~~35-1-308~~ [section 39].

(4) Contests over names registered under this section are governed by ~~35-1-310~~ [section 39]."

Section 252. Section 35-9-103, MCA, is amended to read:

"35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 253. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of ~~35-1-628~~ [section 57] and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has

knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 254. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under ~~Title 35, chapter 1, part 8,~~ [sections 161 through 168] or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 255. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of

incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208."

Section 256. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-416~~ [section 93]."

Section 257. Section 35-9-303, MCA, is amended to read:

"35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

Section 258. Section 35-9-402, MCA, is amended to read:

"35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 259. Section 35-9-404, MCA, is amended to read:

"35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through 35-1-935~~ [sections 184 through 188].

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 260. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section 197].

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has ~~dissenters'~~ appraisal rights under this chapter or ~~35-1-826 through 35-1-839~~ [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have."

Section 261. Section 35-9-504, MCA, is amended to read:

"35-9-504. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant

evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 262. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

Section 263. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) ~~Such~~ The persons desiring to incorporate ~~must~~ shall prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, ~~such~~ the petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is to be formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which ~~shall~~ may not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. ~~Such~~ The directors or trustees ~~shall~~ must at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for ~~such~~ the incorporation or district, with a description of the lands ~~which~~ that each owns and that are proposed to be submitted to ~~said~~ the corporation or district and the character of the ~~same~~ lands and their production, ~~also~~ as well as a consent of the owners to submit the lands to the provisions ~~hereof~~ of this section;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing ~~the same~~ them in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) ~~Such~~ The petition ~~shall~~ must be accompanied by a map giving location of the lands sought to be included in ~~such~~ the corporation or district, but nothing ~~herein to be~~ in this subsection may be construed as requiring ~~such~~ the lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of ~~such~~ the corporation or district, ~~shall~~ must be filed with the petition."

Section 264. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association."

Section 265. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct

of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in ~~35-1-216~~ [section 28]; and

(b) provisions for classification of members in a cooperative.

(3) A cooperative's articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 266. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge."

Section 267. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed $450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations~~, as defined in 35-1-113,~~ may not apply."

Section 268. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to [sections 1 through 221] or Title 85, chapter 6, part 1, ~~or Title 35, chapter 1, part 2,~~ for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to ~~Title 35, chapter 1, part 2,~~ [sections 1 through 221] or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

Section 269. Repealer. The following sections of the Montana Code Annotated are repealed:

35-1-112. Short title.

35-1-113. Definitions.

35-1-114. Purposes.

35-1-115. General powers.

35-1-116. Notice.

35-1-117. Ultra vires.

35-1-118. Reservation of power to amend or repeal.

35-1-119. Liability of and to ostensible corporations.

35-1-215. Incorporators.

35-1-216. Articles of incorporation.

35-1-217. Filing requirements.

35-1-218. Facsimile filing -- requirements -- liability.

35-1-219. Effective time and date of document.

35-1-220. Incorporation.

35-1-221. Correcting filed document.

35-1-222. Organization of corporation.

35-1-225. Authority to amend.

35-1-226. Amendment by board of directors.

35-1-227. Amendment by board of directors and shareholders.

35-1-228. Voting on amendments by voting groups.

35-1-229. Amendment before issuance of shares.

35-1-230. Articles of amendment.

35-1-231. Restated articles of incorporation.

35-1-232. Amendment pursuant to reorganization.

35-1-233. Effect of amendment.

35-1-234. Bylaw amendment by board of directors or shareholders.

35-1-235. Extension of duration of corporation.

35-1-236. Bylaws.

35-1-237. Emergency bylaws.

35-1-238. Bylaw increasing quorum or voting requirement for shareholders.

35-1-239. Bylaw increasing quorum or voting requirement for directors.

35-1-308. Corporate name.

35-1-309. Reserved name.

35-1-310. Contest of registration of name -- penalty.

35-1-311. Registered name of foreign corporation.

35-1-416. Requirement for and duties of board of directors.

35-1-417. Qualifications of directors.

35-1-418. General standards for directors.

35-1-419. Number and election of directors.

35-1-420. Election of directors by certain classes of shareholders.

35-1-421. Terms of directors generally.

35-1-422. Staggered terms for directors.

35-1-423. Resignation of directors.

35-1-424. Removal of directors.

35-1-425. Removal of directors by judicial proceeding.

35-1-426. Vacancy on board.

35-1-427. Compensation of directors.

35-1-428. Penalty for signing false document.

35-1-431. Meetings.

35-1-432. Action without meeting.

35-1-433. Notice of meeting.

35-1-434. Waiver of notice.

35-1-435. Quorum -- voting.

35-1-439. Committees.

35-1-441. Required officers.

35-1-442. Duties of officers.

35-1-443. Standards of conduct for officers.

35-1-444. Resignation and removal of officers.

35-1-445. Contract rights of officers.

35-1-451. Definitions.

35-1-452. Authority to indemnify.

35-1-453. Mandatory indemnification.

35-1-454. Advance for expenses.

35-1-455. Court-ordered indemnification.

35-1-456. Determination and authorization of indemnification.

35-1-457. Indemnification of officers, employees, and agents.

35-1-458. Insurance.

35-1-459. Application.

35-1-461. Definitions.

35-1-462. Judicial action.

35-1-463. Directors' action.

35-1-464. Shareholders' action.

35-1-516. Annual meeting.

35-1-517. Special meeting.

35-1-518. Court-ordered meeting.

35-1-519. Action without meeting.

35-1-520. Notice of meeting.

35-1-521. Waiver of notice.

35-1-522. Record date.

35-1-523. Shareholders' list for meeting.

35-1-524. Voting entitlement of shares.

35-1-525. Proxies.

35-1-526. Shares held by nominees.

35-1-527. Corporation's acceptance of votes.

35-1-528. Quorum and voting requirements for voting groups.

35-1-529. Action by single and multiple voting groups.

35-1-530. Greater quorum or voting requirements.

35-1-531. Voting for directors -- cumulative voting.

35-1-532. Voting trusts.

35-1-533. Voting agreements.

35-1-534. Liability of shareholders.

35-1-535. Shareholders' preemptive rights.

35-1-541. Definitions.

35-1-542. Standing.

35-1-543. Demand.

35-1-544. Stay of proceedings.

35-1-545. Dismissal.

35-1-546. Discontinuance or settlement -- notice.

35-1-547. Payment of expenses.

35-1-548. Applicability to foreign corporations.

35-1-550. Number of shareholders.

35-1-618. Authorized shares.

35-1-619. Terms of class or series determined by board of directors.

35-1-620. Issued and outstanding shares.

35-1-621. Fractional shares.

35-1-622. Subscription for shares before incorporation.

35-1-623. Issuance of shares.

35-1-624. Share dividends.

35-1-625. Share options.

35-1-626. Form and content of certificates.

35-1-627. Shares without certificates.

35-1-628. Restriction on transfer or registration of transfer of shares and other securities.

35-1-629. Expense of issue.

35-1-630. Corporation's acquisition of its own shares.

35-1-712. Distributions to shareholders.

35-1-713. Liability for unlawful distributions.

35-1-813. Merger.

35-1-814. Share exchange.

35-1-815. Action on plan.

35-1-816. Articles of merger or share exchange.

35-1-817. Effect of merger or share exchange.

35-1-818. Merger of subsidiary.

35-1-819. Merger or share exchange with foreign corporation.

35-1-820. Shareholder agreements.

35-1-822. Sale of assets in regular course of business -- mortgage of assets.

35-1-823. Sale of assets other than in regular course of business.

35-1-826. Definitions.

35-1-827. Right to dissent.

35-1-828. Dissent by nominees and beneficial owners.

35-1-829. Notice of dissenters' rights.

35-1-830. Notice of intent to demand payment.

35-1-831. Dissenters' notice.

35-1-832. Duty to demand payment.

35-1-833. Share restrictions.

35-1-834. Payment.

35-1-835. Failure to take action.

35-1-836. After-acquired shares.

35-1-837. Procedure if shareholder dissatisfied with payment or offer.

35-1-838. Court action.

35-1-839. Court costs and attorney fees.

35-1-931. Dissolution by incorporators or initial directors.

35-1-932. Dissolution by board of directors and shareholders.

35-1-933. Articles of dissolution.

35-1-934. Revocation of dissolution.

35-1-935. Effect of dissolution.

35-1-936. Known claims against dissolved corporation.

35-1-937. Unknown claims against dissolved corporation.

35-1-938. Grounds for judicial dissolution.

35-1-939. Discretion of court to grant relief other than dissolution.

35-1-940. Procedure for judicial dissolution.

35-1-941. Receivership or custodianship.

35-1-942. Decree of dissolution.

35-1-943. Deposit with state treasurer.

35-1-944. State dissolution or withdrawal certificate.

35-1-1026. Authority to transact business required.

35-1-1027. Consequences of transacting business without authority.

35-1-1028. Application for certificate of authority.

35-1-1029. Amended certificate of authority.

35-1-1030. Effect of certificate of authority.

35-1-1031. Corporate name of foreign corporation.

35-1-1037. Withdrawal of foreign corporation.

35-1-1038. Grounds for revocation.

35-1-1039. Procedure for and effect of revocation.

35-1-1040. Appeal from revocation.

35-1-1104. Annual report for secretary of state.

35-1-1106. Corporate records.

35-1-1107. Inspection of records by shareholders.

35-1-1108. Scope of inspection right.

35-1-1109. Court-ordered inspection.

35-1-1110. Financial statement for shareholders.

35-1-1111. Other reports to shareholders.

35-1-1206. Fees for filing, copying, and services.

35-1-1307. Secretary of state -- powers -- rulemaking.

35-1-1308. Forms.

35-1-1309. Filing duty of secretary of state.

35-1-1310. Appeal from secretary of state's refusal to file document.

35-1-1311. Evidentiary effect of copy of filed document.

35-1-1312. Certificate of existence or authority.

35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

Section 270. Transition -- application to existing domestic corporations. [Sections 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221] that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Section 271. Codification instruction. (1) [Sections 1 through 26] are intended to be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1, apply to [sections 1 through 26].

(2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

(3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

(4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

(5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

(6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part

6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

(7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

(8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

(9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

(10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14, part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

(11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14, part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

(12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14, part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

(13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14, part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

(14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14, part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

(15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14, part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

(16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14, part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].

Section 272. Saving clause. (1) Except as to procedural provisions, [sections 1 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].

Section 273. Severability. If a part of [sections 1 through 221] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 274. Effective date. [This act] is effective June 1, 2020.

Section 275. Applicability -- existing foreign corporations. A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] is subject to [sections 1 through 221], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221].

- END -

I hereby certify that the within bill,

SB 0325, originated in the Senate.

President of the Senate

Signed this _____ day

of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day

of _____, 2019.

SENATE BILL NO. 325

INTRODUCED BY S. FITZPATRICK

AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112, 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104,

33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

SENATE BILL NO. 325

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112, 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104,

33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; AND REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 221] may be cited as the "Montana Business Corporation Act".

NEW SECTION. **Section 2. Reservation of power to amend or repeal.** The legislature has power to amend or repeal all or part of [sections 1 through 221] at any time, and all domestic and foreign corporations subject to [sections 1 through 221] are governed by the amendment or repeal.

NEW SECTION. **Section 3. Requirements for documents -- extrinsic facts.** (1) A document must satisfy the requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by [sections 1 through 221] and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of

state.

(11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of [sections 1 through 221] except [sections 203 through 214] or [section 221]; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed document;

(ii) the registered office of any entity required in a filed document;

(iii) the registered agent of any entity required in a filed document;

(iv) the number of authorized shares and designation of each class or series of shares;

(v) the effective date of a filed document; and

(vi) any required statement in a filed document of the date on which the underlying transaction was

approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a document that is a matter of public record and the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

NEW SECTION. **Section 4. Forms.** (1) (a) The secretary of state may prescribe and furnish on request forms for:

(i) an application for a certificate of existence or certificate of registration;

(ii) a foreign corporation's registration statement;

(iii) a foreign corporation's statement of withdrawal;

(iv) a foreign corporation's transfer of registration statement; and

(v) the annual report.

(b) If the secretary of state requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by [sections 1 through 221], but their use is not mandatory.

NEW SECTION. **Section 5. Filing -- service -- copying fees.** (1) The secretary of state shall establish fees for:

(a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];

(b) issuing certificates and statements as required by [sections 1 through 26]; and

(c) copying and transmitting documents, priority handling, and responding to requests for information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

NEW SECTION. **Section 6. Effective date -- filed document.** (1) Except to the extent otherwise provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

(a) on the date and at the time of filing, as provided in [section 8(2)];

(b) on the date of filing and at the time specified in the document as its effective time if later than the time under subsection (1)(a);

(c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or

(d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(2) If a filed document does not specify the time zone or place at which a date or time or both are to be determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this state.

NEW SECTION. **Section 7. Correcting filed document.** (1) A document filed by the secretary of state pursuant to [sections 1 through 221] may be corrected if:

(a) the document contains an inaccuracy;

(b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

(c) the electronic transmission was defective.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the inaccuracy or defect to be corrected; and

(iii) correct the inaccuracy or defect; and

(b) by delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

NEW SECTION. **Section 8. Filing duty -- secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall return to the person who delivered the document for filing a copy of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within 5 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not create a presumption that:

(a) the document does or does not conform to the requirements of [sections 1 through 221]; or

(b) the information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

NEW SECTION. **Section 9. Appeal from secretary of state -- refusal to file document.** (1) If the secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing may petition the district court of the first judicial district to compel its filing. The document and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 10. Evidentiary effect -- certified copy of filed document.** A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

NEW SECTION. **Section 11. Certificate of existence or registration.** (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation.

(2) A certificate of existence sets forth:

(a) the domestic corporation's corporate name;

(b) that the domestic corporation is duly incorporated under the law of this state, the date of its

incorporation, and the period of its duration if less than perpetual;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence of the domestic corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state;

(e) that articles of dissolution have not been filed;

(f) that the corporation is not administratively dissolved and a proceeding is not pending under [section 194]; and

(g) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) A certificate of registration sets forth:

(a) the foreign corporation's name used in this state;

(b) that the foreign corporation is registered to do business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the registration of the foreign corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state; and

(e) other facts of record in the office of the secretary of state that may be requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied on as conclusive evidence of the facts stated in the certificate.

NEW SECTION. **Section 12. Penalty -- signing false document.** (1) The execution of any document required to be filed with the secretary of state under [sections 1 through 26] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under [sections 1 through 26].

NEW SECTION. **Section 13. Powers.** (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by [sections 1 through 221].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 26], including establishing necessary fees.

NEW SECTION. **Section 14. General definitions.** For the purposes of [sections 1 through 221], unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in [section 28], all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary of state under any provision of [sections 1 through 221] that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under [sections 1 through 221] that restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of the entity means the document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Conspicuous" means written, displayed, or presented so that a reasonable person against whom the writing is to operate should have noticed it.

(5) "Corporation", "domestic corporation", "business corporation", or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under [sections 1 through 221].

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, and commercial delivery and, if authorized in accordance with [section 15], by electronic transmission.

(7) "Distribution" means a direct or indirect transfer of cash or other property except a corporation's own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of:

(a) a payment of a dividend;

(b) a purchase, redemption, or other acquisition of shares;

(c) a distribution of indebtedness;

(d) a distribution in liquidation; or

(e) another form.

(8) "Document" means:

(a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of those instruments; or

(b) an electronic record.

(9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the law of this state.

(10) "Effective date", when referring to a document accepted for filing by the secretary of state, means the time and date determined in accordance with [section 6].

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(13) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) "Eligible interests" means interests or memberships.

(16) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) "Entity" includes:

(a) a domestic and foreign business corporation;

(b) a domestic and foreign nonprofit corporation;

(c) an estate;

(d) a trust;

(e) a domestic and foreign unincorporated entity; and

(f) a state, the United States, and a foreign government.

(18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including attorney fees.

(19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.

(22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.

(23) "Foreign registration statement" means the foreign registration statement described in [section 205].

(24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.

(25) "Governor" means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

(26) "Includes" and "including" denote a partial definition or a nonexclusive list.

(27) "Individual" means a natural person.

(28) "Interest" means either or both of the following rights under the organic law governing an unincorporated entity:

(a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(29) "Interest holder" means a person who holds of record an interest.

(30) (a) "Interest holder liability" means:

(i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or eligible

entity that is imposed on a person:

(A) solely by reason of the person's status as a shareholder, member, or interest holder; or

(B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders or categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

(ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

(b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subsection (30)(a) when the corporation or eligible entity incurs the liability.

(31) "Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

(32) "Means" denotes an exhaustive definition.

(33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(34) "Merger" means a transaction pursuant to [section 162].

(35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic record.

(36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

(37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(38) "Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

(39) "Person" includes an individual and an entity.

(40) "Principal office" means the office, whether in this state or out of this state, designated in the annual report or foreign registration statement as the place where the principal executive offices of a domestic or foreign corporation are located.

(41) (a) "Private organic rules" means:

(i) the bylaws of a domestic or foreign business or nonprofit corporation; or

(ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record, if any.

(b) When private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(43) (a) "Public organic record" means:

(i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

(ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates the unincorporated entity and is required to be filed.

(b) When a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(44) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the record date is fixed, the determination must be made as of the close of business at the principal office of the corporation on the record date.

(45) "Record shareholder" means:

(a) the person in whose name shares are registered in the records of the corporation; or

(b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to [section 73] on file with the corporation to the extent of the rights granted by the certificate.

(46) "Registered foreign corporation" means a foreign corporation registered to do business in this state pursuant to [sections 203 through 214].

(47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(48) "Share exchange" means a transaction pursuant to [section 163].

(49) "Shareholder" means a record shareholder.

(50) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation are divided.

(51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed

signature; or

(b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, including an electronic signature in an electronic transmission.

(52) "State", when referring to a part of the United States, includes a state, commonwealth, or territory or insular possession of the United States and their agencies and governmental subdivisions.

(53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(54) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following:

(i) a domestic or foreign business or nonprofit corporation;

(ii) a series of a limited liability company or of another type of entity;

(iii) an estate;

(iv) a trust; or

(v) a state, the United States, or a foreign government.

(b) The term includes a general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(56) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(58) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or [sections 1 through 221] are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 221] to vote

generally on the matter are for that purpose a single voting group.

(59) "Voting power" means the current power to vote in the election of directors.

(60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to [section 80(1)].

(61) "Writing" or "written" means any information in the form of a document.

NEW SECTION. **Section 15. Notices and other communications.** (1) A notice under [sections 1 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [sections 1 through 221] must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include:

(a) a newspaper of general circulation in the area where published;

(b) radio, television, or other form of public broadcast communication; or

(c) other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10).

(5) Any consent under subsection (4) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

(a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with the consent; and

(b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or other person responsible for the giving of notice or other communications. However, the inadvertent failure to treat the inability as a revocation does not invalidate any meeting or other action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(b) it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under [section 215(4)];

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221], those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal act.

NEW SECTION. **Section 16. Number of shareholders.** (1) For purposes of [sections 1 through 221], the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; and

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of [sections 1 though 221], shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

NEW SECTION. **Section 17. Qualified director.** (1) A qualified director is a director who, at the time action is to be taken under:

(a) [section 28(2)(f)], is not a director:

(i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply; or

(ii) who has a material relationship with any other person to whom the limitation or elimination would apply;

(b) [section 87], does not have:

(i) a material interest in the outcome of the proceeding; or

(ii) a material relationship with a person who has such an interest;

(c) [section 122 or 124]:

(i) is not a party to the proceeding;

(ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or disclaimer is challenged in the proceeding; and

(iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);

(d) [section 131] is not a director:

(i) as to whom the transaction is a director's conflicting interest transaction; or

(ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(e) [section 133] is not a director who:

(i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of another person; or

(ii) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(2) For purposes of this section:

(a) "material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(b) "material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(3) The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(a) nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(b) service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director;

or

(c) with respect to action to be taken under [section 87], status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

NEW SECTION. **Section 18. Householding.** (1) A corporation has delivered written notice or any other report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(a) the corporation delivers one copy of the notice, report, or statement to the common address;

(b) the corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) is considered to have consented to receiving a single copy at the common address, provided that the notice of intention explains that consent may be revoked and the method for revoking.

NEW SECTION. **Section 19. Definitions -- ratification of defective corporate actions.** In [sections 19 through 26], the following definitions apply:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization; and

(b) an overissue.

(4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure would render the corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under [section 46] at the time of the issuance; or

(b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series (including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to those shares) that were created or issued as a result of a defective corporate action and that:

(a) but for any failure of authorization would constitute valid shares; or

(b) cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with [sections 1 through 221], including as a result of ratification or validation under [sections 19 through 26].

(8) (a) "Validation effective time", with respect to any defective corporate action ratified under [sections 19 through 26], means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by [section 23] becomes effective in accordance with [section 15]; or

(ii) the time at which any articles of validation filed in accordance with [section 25] become effective.

(b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under [section 26] or otherwise unless ordered by the court.

NEW SECTION. **Section 20. Defective corporate actions.** (1) A defective corporate action is not void or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

(2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive means of ratifying or validating a defective corporate action, and the absence or failure of ratification in accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise or create a presumption that any corporate action is or was a defective corporate action or is void or voidable.

(3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued on:

(a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the authorization, designation, or creation of the shares.

NEW SECTION. **Section 21. Ratification -- defective corporate actions.** (1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

(a) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) that the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) the earlier of the date on which those persons first took action or the date on which they were purported to have been elected as the initial board of directors; and

(c) that the ratification of the election of the person or persons as the initial board of directors is approved.

(3) If any provision of [sections 1 through 221], the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party that is in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with [section 22].

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

NEW SECTION. **Section 22. Action on ratification.** (1) The quorum and voting requirements applicable to a ratifying action by the board of directors under [section 21(1)] are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(2) If the ratification of the defective corporate action requires approval by the shareholders under [section 21(3)] and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose or one of the purposes of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(a) either a copy of the action taken by the board of directors in accordance with [section 21(1)] or the information required by [section 21(1)(a) through (1)(d)]; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by

[section 21(3)] must be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(4) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring ratification exceed the votes cast opposing ratification of the election at a meeting at which a quorum is present.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under [section 21(3)] (and without giving effect to any ratification of putative shares that becomes effective as a result of the vote) are neither entitled to vote nor counted for quorum purposes in a vote to approve the ratification of a defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by [section 21], approval of an amendment to the articles of incorporation under [sections 149 through 160] to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue is also required.

NEW SECTION. **Section 23. Notice requirements.** (1) Unless shareholder approval is required under [section 21(3)], prompt notice of an action taken under [section 21] must be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(a) the date of the action by the board of directors; and

(b) the date the defective corporate action was ratified, provided that notice may not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) either:

(i) a copy of the action taken by the board of directors in accordance with [section 21(1) or (2)]; or

(ii) the information required by [section 21(1)(a) through (1)(d) or (2)(a) through (2)(c)], as applicable; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under [section 21(3)] if notice is given in accordance with [section 22(2)].

(4) A notice required by this section may be given in any manner permitted by [section 15] and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

NEW SECTION. **Section 24. Effect of ratification.** From and after the validation effective time and without regard to the 120-day period during which a claim may be brought under [section 26]:

(1) each defective corporate action ratified in accordance with [section 21] may not be void or voidable as a result of the failure of authorization identified in the action taken under [section 21(1) or (2)] and is considered a valid corporate action effective as of the date of the defective corporate action;

(2) the issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under [section 21] may not be void or voidable, and such putative share or fraction of a putative share is considered an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) any corporate action taken subsequent to the defective corporate action ratified in accordance with [sections 19 through 26] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action are valid as of the time taken.

NEW SECTION. **Section 25. Filings.** (1) If the defective corporate action ratified under [sections 19 through 26] would have required under any other section of [sections 1 through 221] a filing in accordance with [sections 1 through 221], then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by [sections 1 through 221], the corporation shall file articles of validation in accordance with this section, and the articles of validation serve to amend or substitute for any other filing with respect to the defective corporate action required by [sections 1 through 221].

(2) The articles of validation must set forth:

(a) the defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization in respect of the defective corporate action;

(d) a statement that the defective corporate action was ratified in accordance with [section 21], including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

(e) the information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) if a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(b) if a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(iii) the date and time that the filing is considered to have become effective; or

(c) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under [section 21] would have required a filing under any other section of [sections 1 through 221], the articles of validation must set forth:

(i) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(ii) the date and time that the filing is considered to have become effective.

NEW SECTION. **Section 26. Judicial proceedings -- validity of corporate actions.** (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under [section 21], or any other person claiming to be substantially and adversely affected by a ratification under [section 21], the district court in the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may:

(a) determine the validity and effectiveness of any corporate action or defective corporate action;

(b) determine the validity and effectiveness of any ratification under [section 21];

(c) determine the validity of any putative shares; and

(d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations regarding matters it considers proper under the circumstances.

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days of the validation effective time.

NEW SECTION. **Section 27. Incorporators.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

NEW SECTION. **Section 28. Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 39];

(b) the number of shares the corporation is authorized to issue;

(c) the street and mailing addresses of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iv) a par value for authorized shares or classes of shares; or

(v) the imposition of interest holder liability on shareholders;

(c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law;

(e) a provision permitting or making obligatory indemnification of a director for liability as defined in [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

(i) receipt of a financial benefit to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or its shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law; and

(f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any or one or more classes or categories of business opportunities before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer:

(i) also requires approval of that application by the board of directors, subsequent to the effective date

of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131]; and

(ii) may be limited by the authorizing action of the board.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 221].

(4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) As used in this section, "related person" has the meaning specified in [section 129].

NEW SECTION. **Section 29. Incorporation.** (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

NEW SECTION. **Section 30. Liability for preincorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly and severally liable for all liabilities created while so acting.

NEW SECTION. **Section 31. Organization of corporation.** (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect initial directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

NEW SECTION. **Section 32. Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(3) The bylaws may contain one or both of the following provisions:

(a) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to the procedures or conditions provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to procedures and conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record date precedes its adoption.

(4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical, and orderly process.

NEW SECTION. **Section 33. Emergency bylaws.** (1) Unless the articles of incorporation provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 34. Forum selection.** (1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be brought in that other court of this state, notwithstanding that the other court of this state is not specified in the provision, and in any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) For the purposes of this section, "internal corporate claim" means:

(a) any claim that is based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity;

(b) any derivative action or proceeding brought on behalf of the corporation;

(c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the articles of incorporation or bylaws; or

(d) any action asserting a claim governed by the internal affairs doctrine that is not included in this subsection (4).

NEW SECTION. **Section 35. Purposes.** (1) Every corporation incorporated under [sections 1 through 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other statute.

NEW SECTION. **Section 36. General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221] within or outside this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans,

share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

NEW SECTION. **Section 37. Emergency powers.** (1) In anticipation of or during an emergency as provided in subsection (4), the board of directors of a corporation may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors must be given only to those directors whom it is practicable to reach and may be given in any practicable manner; and

(b) one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 38. Lack of power to act.** (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act;

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) in a proceeding by the attorney general under [section 197].

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

NEW SECTION. **Section 39. Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of similar meaning in another language; and

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 35] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated in this state that is not administratively dissolved. If the corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law of this state;

(c) the name of a foreign corporation registered to do business in this state or an alternate name adopted by a foreign corporation registered to do business in this state because its corporate name is unavailable;

(d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name adopted by a foreign nonprofit corporation registered to do business in this state because its real name is unavailable;

(f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved.

If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(g) the name of a foreign unincorporated entity registered to do business in this state or an alternate name adopted by a foreign unincorporated entity registered to do business in this state because its real name is unavailable; and

(h) any assumed business name, trademark, or service mark reserved or registered with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation or unincorporated entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability partnership is incorporated or authorized to transact business in this state and the proposed user corporation, domestic filing entity, or limited liability partnership:

(a) has merged with the other corporation, filing entity, or limited liability partnership;

(b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

(c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing entity, or limited liability partnership; or

(d) has obtained written permission from the other corporation, filing entity, or limited liability partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) [Sections 1 through 221] do not control the use of fictitious names.

NEW SECTION. **Section 40. Reserved name.** (1) A person may reserve the exclusive use of a corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not

available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

NEW SECTION. **Section 41. Registered name.** (1) A foreign corporation may register its corporate name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 39(2)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state or country and date of its incorporation, and a brief description of the nature of the business that is to be conducted in this state.

(3) The name is registered for the applicant's exclusive use on the effective date of the application and for the remainder of the calendar year unless renewed.

(4) A foreign corporation whose name registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application that complies with the requirements of subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose name registration is effective may:

(a) register to do business as a foreign corporation under the registered name if it complies with [section 39(1)(b)]; or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic corporation is incorporated or the foreign corporation registers to do business under that name.

NEW SECTION. **Section 42. Registered office and agent -- domestic and registered foreign corporations.** (1) Each corporation shall continuously maintain in this state:

(a) a registered office, which may be the same as any of its places of business; and

(b) a registered agent, which may be:

(i) an individual who resides in this state and whose business office is identical with the registered office; or

(ii) a domestic or foreign corporation or eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is registered to do business in this state.

(2) As used in [sections 42 through 45], "corporation" means both a domestic corporation and a registered foreign corporation.

NEW SECTION. **Section 43. Change -- registered office -- registered agent.** (1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) the name of the corporation;

(b) the street and mailing addresses of its current registered office;

(c) if the current registered office is to be changed, the street and mailing addresses of the new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) that after the change or changes are made, the street and mailing addresses of its registered office and of the business office of its registered agent will be identical.

(2) If the street or mailing address of a registered agent's business office changes, the agent shall change the street or mailing address of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and delivering to the secretary of state for filing a signed statement that complies with the requirements of subsection (1) and states that the corporation has been notified of the change.

NEW SECTION. **Section 44. Resignation -- registered agent.** (1) A registered agent may resign as agent for a corporation by delivering to the secretary of state for filing a statement of resignation signed by the agent that states:

(a) the name of the corporation;

(b) the name of the agent;

(c) that the agent resigns from serving as registered agent for the corporation; and

(d) the address of the corporation to which the agent will deliver the notice required by subsection (3).

(2) A statement of resignation takes effect on the earlier of:

(a) 12:01 a.m. on the 31st day after the day on which it is filed by the secretary of state; or

(b) the designation of a new registered agent for the corporation.

(3) A registered agent shall promptly deliver to the corporation notice of the date on which a statement of resignation was delivered to the secretary of state for filing.

(4) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under [sections 1 through 221] for any matter subsequently tendered to it as agent for the corporation. The resignation does not affect any contractual rights the corporation has against the agent or that the agent has against the corporation.

(5) A registered agent may resign with respect to a corporation regardless of whether the corporation is in good standing.

NEW SECTION. **Section 45. Service on corporation.** (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(3) If process, notice, or demand cannot be served on a corporation pursuant to subsection (1) or (2) or is to be served on a registered foreign corporation that has withdrawn its registration pursuant to [section 209 or 211] or the registration of which has been terminated pursuant to [section 213], then the secretary of state is an agent of the corporation on whom process, notice, or demand may be served. Service of any process, notice,

or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection at the earliest of:

(a) the date the corporation receives the process, notice, or demand;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after the process, notice, or demand is deposited in the United States mail by the secretary of state.

(4) This section does not prescribe the only means or necessarily the required means of serving a corporation.

NEW SECTION. **Section 46. Authorized shares.** (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and, before the issuance of shares of a class or series, describe the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

(a) one or more classes or series of shares that together have full voting rights; and

(b) one or more classes or series of shares, which may be the same class, classes, or series as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent otherwise provided by [sections 1 through 221];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or on the occurrence of a specified event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) at prices and in amounts specified or determined in accordance with a formula;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including distributions on the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(6) The description of the preferences, rights, and limitations of classes or series of shares in subsection (3) is not exhaustive.

NEW SECTION. **Section 47. Terms of class or series -- determination by board of directors.** (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(a) classify any unissued shares into one or more classes or into one or more series within a class;

(b) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under [section 46], of:

(a) any class of shares before the issuance of any shares of that class; or

(b) any series within a class before the issuance of any shares of that series.

(3) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (2).

NEW SECTION. **Section 48. Issued and outstanding shares.** (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to [section 60].

(3) At all times that shares of the corporation are outstanding, one or more shares that together have full voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

NEW SECTION. **Section 49. Fractional shares.** (1) A corporation may issue fractions of a share or in lieu of doing so may:

(a) pay in cash the value of fractions of a share;

(b) issue scrip in registered or bearer form entitling the holder to receive a full share on surrendering enough scrip to equal a full share; or

(c) arrange for disposition of fractional shares by the holders of those shares.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by [section 55(2)].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition, including that:

(a) the scrip will become void if not exchanged for full shares before a specified date; and

(b) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

NEW SECTION. **Section 50. Subscription for shares -- before incorporation.** (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and

nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of cash or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation delivers a written demand for payment to the subscriber.

NEW SECTION. **Section 51. Issuance of shares.** (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders at a meeting at which a quorum consisting of a majority, or a greater number the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists if:

(i) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and

(ii) the voting power of shares that are issued and issuable as a result of the transaction or series of

integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(b) In this subsection (6):

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares is the greater of:

(A) the voting power of the shares to be issued; or

(B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

NEW SECTION. **Section 52. Liability of shareholders.** (1) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except:

(a) to the extent provided in a provision of the articles of incorporation permitted by [section 28(2)(b)(v)]; and

(b) that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

NEW SECTION. **Section 53. Share dividends.** (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issue;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which may not be retroactive. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

NEW SECTION. **Section 54. Share rights -- options -- warrants -- awards.** (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(a) the terms and conditions upon which the rights, options, or warrants are issued; and

(b) the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue the rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(2) The terms and conditions of the rights, options, or warrants may include restrictions or conditions that:

(a) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or

(b) invalidate or void the rights, options, or warrants held by any person or transferee described in subsection (2)(a).

(3) The board of directors may authorize one or more officers to:

(a) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of rights, options, warrants, or other equity compensation awards and the terms of the rights, options, warrants, or awards to be received by the recipients, provided that an officer may not use this authority to designate the officer or any other person the board of directors may specify as a recipient of those rights, options, warrants, or other equity compensation awards.

NEW SECTION. **Section 55. Certificates -- form -- content.** (1) Shares may be, but need not be, represented by certificates. Unless [sections 1 through 221] or another statute expressly provides otherwise, the

rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize:

(a) the preferences, rights, and limitations applicable to each class and series;

(b) any variations in preferences, rights, and limitations among the holders of the same class or series; and

(c) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed by two officers designated in the bylaws.

(5) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

NEW SECTION. **Section 56. Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by [section 55(2) and (3)] and, if applicable, [section 57].

NEW SECTION. **Section 57. Restriction on transfer of shares.** (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation or may impose restrictions on, including the alteration or elimination of, the application of [section 201]. A restriction does not

affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction described in subsection (1) is valid and enforceable against a shareholder or a transferee of the shareholder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by [section 56(2)]. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction described in subsection (1) is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law; or

(c) for any other reasonable purpose.

(4) A restriction described in subsection (1) may:

(a) obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 58. Preemptive rights -- shareholder.** (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares, except to the extent the articles of incorporation provide that right.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar effect, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right,

to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A preemptive right may be waived by a shareholder. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for cash.

(d) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 59. Corporation's acquisition of its own shares.** (1) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

NEW SECTION. **Section 60. Distributions to shareholders.** (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7), the effect of a distribution under subsection (3) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in

accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(8) This section does not apply to distributions in liquidation under [sections 184 through 202].

NEW SECTION. **Section 61. Annual meeting.** (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted by [section 64], a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors must be elected.

(2) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

NEW SECTION. **Section 62. Special meeting.** (1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or of the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under [section 63 or 67], the record date for determining shareholders entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the

corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on which the demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (1)(b) have been delivered to the corporation.

(3) Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by [section 65(3)] may be conducted at a special meeting of shareholders.

NEW SECTION. **Section 63. Court-ordered meeting.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of one or more shareholders who signed a demand for a special meeting valid under [section 62] if:

(i) notice of the special meeting was not given within 30 days after the first day on which the requisite number of demands was delivered to the corporation; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the shares represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) For purposes of subsection (1)(a), "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 64. Action without meeting.** (1) Action required or permitted by [sections

1 through 221] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, be signed by all the shareholders entitled to vote on the action, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) The articles of incorporation may provide that any action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action to be taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to [section 78], directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(3) If not otherwise fixed under [section 67] and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under [section 67] and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent is effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

(4) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described in that manner in any document. Unless the articles of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action have been delivered to the corporation.

(5) If [sections 1 through 221] require that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(6) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(7) The notice requirements in subsections (5) and (6) may not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements does not invalidate actions taken by written consent. However, this subsection may not be considered to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time period.

NEW SECTION. **Section 65. Notice of meeting.** (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to [section 69] for holders of any class or series of shares, the notice to the holders of that class or series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting if that date is different from the record date for determining shareholders entitled to notice of the meeting. Unless [sections 1 through 221] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(2) Unless [sections 1 through 221] or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [section 63] or [section 67], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 67], however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

NEW SECTION. **Section 66. Waiver of notice.** (1) A shareholder may waive any notice required by [sections 1 through 221] or the articles of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

NEW SECTION. **Section 67. Record date for meeting.** (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders and may not be retroactive.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(5) The record dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

NEW SECTION. **Section 68. Conduct of meeting.** (1) At each meeting of shareholders, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of that provision, by the board of directors.

(2) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

(3) Rules adopted for the meeting and the conduct of the meeting must be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted on. If no announcement is made, the polls are considered to have closed on the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes and no revocations or changes to ballots, proxies, or votes may be accepted.

NEW SECTION. **Section 69. Remote participation -- shareholder's meetings.** (1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes the participation for that class or series. Participation as a shareholder by means of remote communication is subject to guidelines and procedures the board of directors

adopts and must be in conformity with subsection (2).

(2) Shareholders participating in a shareholders' meeting by means of remote communication are considered present and may vote at the meeting if the corporation has implemented reasonable measures:

(a) to verify that each person participating remotely as a shareholder is a shareholder; and

(b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

NEW SECTION. **Section 70. Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and, within each voting group, by class or series of shares and must show the address of and number of shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 216(3)], to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the

corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

NEW SECTION. **Section 71. Voting entitlements of shares.** (1) Except as provided in subsections (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(5) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

NEW SECTION. **Section 72. Proxies.** (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date

of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; and

(e) a party to a voting agreement created under [section 81].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

NEW SECTION. **Section 73. Shares held by intermediaries and nominees.** (1) A corporation's board

of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder does not have those rights or privileges.

(2) The procedure must specify:

(a) the types of intermediaries or nominees to which it applies;

(b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;

(c) the manner in which the procedure is selected, which must include that the beneficial ownership certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective;

(f) requirements for notice to the corporation with respect to the arrangement; and

(g) the form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

NEW SECTION. **Section 74. Acceptance of votes -- other instruments.** (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under [section 79], the inspector of election also may request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

NEW SECTION. **Section 75. Quorum and voting requirements -- voting groups.** (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares

exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

(5) The election of directors is governed by [section 78].

(6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that provision.

NEW SECTION. **Section 76. Action by single and multiple voting groups.** (1) If the articles of incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that matter is taken when it is voted on by that voting group as provided in [section 75].

(2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different times.

NEW SECTION. **Section 77. Modifying quorum or voting requirements.** An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 78. Voting for directors -- cumulative voting.** (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for that right.

(3) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors" or words of similar meaning means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

NEW SECTION. **Section 79. Inspectors of election.** (1) A corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (2) and may rely on information provided by those and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(2) The inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting;

(c) determine the validity of proxy appointments and ballots;

(d) count the votes; and

(e) make a written report of the results.

(3) In performing their duties, the inspectors may examine:

(a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

(b) any envelope or related writing submitted with the proxy appointment forms;

(c) any ballots;

(d) any evidence or other information specified in [section 74]; and

(e) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(4) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (2) specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that the information is relevant and reliable.

(5) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under [section 92] or other judicial proceeding.

NEW SECTION. **Section 80. Voting trusts.** (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the

trustee's name.

(3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that became effective prior to [the effective date of sections 1 through 221] remains governed by the statute concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

NEW SECTION. **Section 81. Voting agreements.** (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 80].

(2) A voting agreement created under this section is specifically enforceable.

NEW SECTION. **Section 82. Shareholder agreements.** (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in [section 60];

(c) establishes who may be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section is:

(a) as set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the

directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement.

NEW SECTION. **Section 83. Definitions -- derivative proceedings.** In [sections 83 through 90] the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 90], in the right of a foreign corporation.

(2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 84. Standing.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

NEW SECTION. **Section 85. Demand.** A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made on the corporation to take suitable action; and

(2) 90 days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

NEW SECTION. **Section 86. Stay of proceedings.** If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

NEW SECTION. **Section 87. Dismissal.** (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith, after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be made by:

(a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors constitute a quorum.

(3) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either:

(a) that a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(b) that the requirements of subsection (1) have not been met.

(4) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not, the corporation has the burden of proving that the requirements of subsection (1) have been met.

(5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

NEW SECTION. **Section 88. Discontinuance -- settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class or series of

shareholders, the court shall direct that notice be given to the shareholders affected.

NEW SECTION. **Section 89. Payment of expenses.** On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper if it finds that the pleading, motion, or other paper:

(a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

NEW SECTION. **Section 90. Applicability to foreign corporations.** In any derivative proceeding in the right of a foreign corporation, the matters covered by [sections 83 through 90] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

NEW SECTION. **Section 91. Shareholder action to appoint custodian or receiver.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(2) The court:

(a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the

business of the corporation until a full hearing is held;

(b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(c) has jurisdiction over the corporation and all of its property, wherever located.

(3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(4) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(a) a custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(b) a receiver:

(i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale if authorized by the court; and

(ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation to be paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 92. Judicial determination -- corporate offices -- review of elections and shareholder votes.** (1) Upon application of or in a proceeding commenced by a person specified in subsection (2), the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may determine:

(a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(b) the right of an individual to hold the office of director or officer of the corporation;

(c) the result or validity of any vote by the shareholders of the corporation;

(d) the right of a director to membership on a committee of the board of directors; and

(e) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the following persons:

(a) the corporation;

(b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(c) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of the person's right to the office or membership;

(d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of the person's right to the office; and

(e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

(3) In connection with any application or proceeding under subsection (1), the following must be named as defendants unless the person made the application or commenced the proceeding:

(a) the corporation;

(b) any individual whose right to office or membership on a committee of the board of directors is contested;

(c) any individual claiming the office or membership at issue; and

(d) any person claiming a right covered by subsection (1)(e) that is at issue.

(4) In connection with any application or proceeding under subsection (1), service of process may be made on each of the persons specified in subsection (3) by either:

(a) service of process on the corporation addressed to the person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(b) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(5) When service of process is made on a person other than the corporation by service on the

corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly provide written notice of the service, together with copies of all process and the application or complaint, to the person at the person's last-known residence or business address or as permitted by statute of this state or by rule of the applicable court.

(6) In connection with any application or proceeding under subsection (1), the court shall dispose of the application or proceeding on an expedited basis and also may:

(a) order additional or further notice the court considers proper under the circumstances;

(b) order that additional persons be joined as parties to the proceeding if the court determines that joinder is necessary for a just adjudication of matters before the court;

(c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or otherwise;

(d) appoint a master to conduct an election or meeting;

(e) enter temporary, preliminary, or permanent injunctive relief;

(f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(g) order any other relief the court determines is equitable, just, and proper.

(7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

(8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court that existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

NEW SECTION. **Section 93. Board of directors -- requirements -- functions.** (1) Except as may be provided in an agreement authorized under [section 82], each corporation must have a board of directors.

(2) Except as may be provided in an agreement authorized under [section 82] and subject to any limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed by or under the direction of and subject to the oversight of the board of directors.

NEW SECTION. **Section 94. Qualifications of directors.** (1) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(2) A requirement that is based on a past, prospective, or current action or expression of opinion by a nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not a permissible qualification under this section. However, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(3) A director need not be a resident of this state or a shareholder unless the articles of incorporation or bylaws prescribe those requirements.

(4) A qualification for nomination for director prescribed before a person's nomination applies to the person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to the person with respect to the nomination.

(5) A qualification for director prescribed before a director has been elected or appointed applies only at the time an individual becomes a director or during a director's term. A qualification prescribed after a director has been elected or appointed does not apply to that director before the end of that director's term.

NEW SECTION. **Section 95. Directors -- number -- election.** (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or unless their terms are staggered under [section 98].

NEW SECTION. **Section 96. Election of directors -- certain classes or series of shares.** If the articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number

of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes of the election of directors.

NEW SECTION. **Section 97. Terms of directors generally.** (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the extent:

(a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

(b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

NEW SECTION. **Section 98. Staggered terms for directors.** The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

NEW SECTION. **Section 99. Resignation of directors.** (1) A director may resign at any time by delivering a written notice of resignation to the board of directors or its chair or to the secretary.

(2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

NEW SECTION. **Section 100. Removal of directors by shareholders.** (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number. However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

NEW SECTION. **Section 101. Removal of directors by judicial proceeding.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) considering the director's course of conduct and the inadequacy of other available remedies, removal or other relief would be in the best interests of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must

comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

NEW SECTION. **Section 102. Vacancy -- board of directors.** (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

NEW SECTION. **Section 103. Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

NEW SECTION. **Section 104. Meetings.** (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

NEW SECTION. **Section 105. Action without meeting.** (1) Except to the extent that the articles of

incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described in that manner in any document.

NEW SECTION. **Section 106. Notice of meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

NEW SECTION. **Section 107. Waiver of notice.** (1) A director may waive any notice required by [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

NEW SECTION. **Section 108. Quorum and voting.** (1) Unless the articles of incorporation or bylaws

provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in [sections 1 through 221].

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or transacting business at the meeting;

(b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

NEW SECTION. **Section 109. Committees of board.** (1) Unless [sections 1 through 221], the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

(3) [Sections 104 through 108] apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under [section 93] to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) authorize or approve distributions except according to a formula or method, or within limits,

prescribed by the board of directors;

(b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by shareholders;

(c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;

(d) adopt, amend, or repeal bylaws;

(e) approve a plan of merger, including plans not requiring shareholder approval;

(f) authorize or approve reacquisition of shares except according to a formula or method prescribed by the board of directors; or

(g) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

NEW SECTION. **Section 110. Submission of matters for shareholder vote.** A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

NEW SECTION. **Section 111. Standards of conduct for directors.** (1) Each member of the board of directors, when discharging the duties of a director, shall act:

(a) in good faith; and

(b) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a board committee, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a similar position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(4) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a) or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(5) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) A director is entitled to rely, in accordance with subsection (4) or (5), on:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

NEW SECTION. **Section 112. Standards of liability for directors.** (1) A director may not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(a) no defense interposed by the director precludes liability based on:

(i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];

(ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section 132]; or

(iii) the protection afforded by [section 133]; and

(b) the challenged conduct consisted or was the result of:

(i) action not in good faith; or

(ii) a decision:

(A) that the director did not reasonably believe to be in the best interests of the corporation; or

(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct and:

(A) the relationship, domination, or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) after a reasonable expectation of an effect on the director's judgment has been established, the director may not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for an inquiry; or

(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(2) The party seeking to hold the director liable:

(a) for money damages also has the burden of establishing that:

(i) harm to the corporation or its shareholders has been suffered; and

(ii) the harm suffered was proximately caused by the director's challenged conduct; or

(b) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) Nothing in this section:

(a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional interest under [section 130];

(c) affects any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States; or

(d) invalidates or otherwise limits the business judgment rule under the common law.

NEW SECTION. **Section 113. Director's liability for unlawful distributions.** (1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes that when taking the action the director did not comply with [section 111].

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

(a) contribution from every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

(3) A proceeding to enforce:

(a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after the date:

(i) on which the effect of the distribution was measured under [section 60(5) or (7)];

(ii) as of which the violation of [section 60(1)] occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) on which the distribution of assets to shareholders under [section 192(1)] was made; or

(b) contribution or recoupment under subsection (2) is barred unless it is commenced within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

NEW SECTION. **Section 114. Officers.** (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to an officer responsibility for maintaining and authenticating the records of the corporation required to be kept under [section 215(1)].

(4) The same individual may simultaneously hold more than one office in a corporation.

NEW SECTION. **Section 115. Functions of officers.** Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

NEW SECTION. **Section 116. Standards of conduct for officers.** (1) An officer, when performing in an official capacity, has the duty to act:

(a) in good faith;

(b) with the care that a person in a similar position would reasonably exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation:

(a) to inform the superior officer to whom or the board of directors or the board committee to which the officer reports of information about the affairs of the corporation known to the officer within the scope of the officer's functions and known to the officer to be material to the superior officer, board, or committee; and

(b) to inform the officer's superior officer, another appropriate person within the corporation, or the board of directors, or a board committee of any actual or probable material violation of law involving the corporation or any material breach of duty to the corporation by an officer, employee, or agent of the corporation that the officer believes has occurred or is likely to occur.

(3) In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(a) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence.

(4) An officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability will depend in each instance on applicable law, including those principles of [section 112] that have relevance.

NEW SECTION. **Section 117. Resignation and removal of officers.** (1) An officer may resign at any time by delivering a written notice to the corporation. A resignation is effective as provided in [section 15(9)] unless the notice provides for delayed effectiveness, including effectiveness determined on a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

(2) An officer may be removed at any time with or without cause by:

(a) the board of directors;

(b) the appointing officer unless the bylaws or the board of directors provides otherwise; or

(c) any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

NEW SECTION. **Section 118. Contract rights of officers.** (1) The election or appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An

officer's resignation does not affect the corporation's contract rights, if any, with the officer.

NEW SECTION. **Section 119. Definitions -- indemnification and advance for expenses.** For the purposes of [sections 119 through 128], unless the context clearly requires otherwise, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or who, while a director of the corporation, is or was serving at the corporation's request as a director of another entity or trustee of an employee benefit plan. A director is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of a director.

(3) "Liability" means the obligation to pay a judgment, a settlement, a penalty, a fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding, including attorney fees.

(4) "Officer" means an individual who is or was an officer of a corporation or who, while an officer of the corporation, is or was serving at the corporation's request as an officer of another entity or trustee of an employee benefit plan. An officer is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of an officer.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an officer as contemplated in [section 125], the office in a corporation held by the officer.

(b) The term does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan, or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

NEW SECTION. **Section 120. Permissible indemnification.** (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(a) (i) the director acted in good faith; and

(ii) the director reasonably believed:

(A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(B) in all other cases, that the conduct was at least not opposed to the best interests of the corporation; and

(iii) in the case of a criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful; or

(b) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by [section 28(2)(e)].

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the best interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under [section 123(1)(c)], a corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1); or

(b) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

NEW SECTION. **Section 121. Mandatory indemnification.** A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against expenses incurred by the director in connection with the proceeding.

NEW SECTION. **Section 122. Advance for expenses.** (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a director if the director delivers to the corporation a signed, written undertaking of the director to repay any funds advanced if:

(a) the director is not entitled to mandatory indemnification under [section 121]; and

(b) it is ultimately determined under [section 123] or [section 124] that the director is not entitled to indemnification.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section must be made:

(a) by the board of directors in the following manner:

(i) if there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or

(ii) by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of all the qualified directors; or

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (3)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

NEW SECTION. **Section 123. Court-ordered indemnification and advance for expenses.** (1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an

advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) to indemnify the director; or

(ii) to advance expenses to the director even if the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c), it may also order the corporation to pay the director's expenses incurred to obtain court-ordered indemnification or advance for expenses.

NEW SECTION. **Section 124. Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under [section 120] unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in [section 120].

(2) The determination must be made:

(a) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of all the qualified directors;

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (2)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(3) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection (2)(b)(ii).

NEW SECTION. **Section 125. Indemnification of officers.** (1) A corporation may indemnify and advance expenses under [sections 119 through 128] to an officer who is a party to a proceeding because the person is an officer:

(a) to the same extent as a director; and

(b) if the person is an officer but not a director, to any further extent provided by the articles of incorporation or the bylaws or by a resolution adopted or a contract approved by the board of directors or shareholders, except for:

(i) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) liability arising out of conduct that constitutes:

(A) receipt by the officer of a financial benefit to which the officer is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders; or

(C) an intentional violation of criminal law.

(2) Subsection (1)(b) applies to an officer who is also a director if the officer is made a party to the proceeding based on an act or omission solely as an officer.

(3) An officer who is not a director is entitled to mandatory indemnification under [section 121] and may apply to a court under [section 123] for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections.

NEW SECTION. **Section 126. Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the

corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation or a joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under [sections 119 through 128].

NEW SECTION. **Section 127. Variation by corporate action -- application.** (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with [section 120] or advance funds to pay for or reimburse expenses in accordance with [section 122]. An obligatory provision under this section satisfies the requirements for authorization referred to in [section 122(3)] and [section 124(3)]. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with [section 122] to the fullest extent permitted by law unless the provision expressly provides otherwise.

(2) A right of indemnification or to advances for expenses created by [sections 119 through 128] or under subsection (1) of this section and in effect at the time of an act or omission may not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders adopted after the occurrence of the act or omission unless, in the case of a right created under subsection (1), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision pursuant to subsection (1) may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise expressly provided. A provision for indemnification or advance for expenses in the articles of incorporation or bylaws or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party that exists at the time the merger takes effect is governed by [section 167(1)(d)].

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to [sections 119 through 128].

(5) [Sections 119 through 128] do not limit a corporation's power to pay or reimburse expenses incurred

by a director or an officer in connection with appearing as a witness in a proceeding at a time when the director or officer is not a party.

(6) [Sections 119 through 128] do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

NEW SECTION. **Section 128. Exclusivity.** A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by [sections 119 through 128].

NEW SECTION. **Section 129. Definitions -- director's conflicting interest transactions.** For the purposes of [sections 129 through 132], unless otherwise specified, the following definitions apply:

(1) "Control" or "controlled by" means:

(a) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(b) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(a) to which, at the relevant time, the director is a party;

(b) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(c) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of [section 130(2)(c)], that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(a) fair in terms of the director's dealings with the corporation; and

(b) comparable to what might have been obtainable in an arm's-length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of

the transaction.

(5) "Related person" means:

(a) an individual's spouse;

(b) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of an individual or of an individual's spouse;

(c) a natural person living in the same home as an individual;

(d) an entity, other than the corporation or an entity controlled by the corporation, controlled by an individual or any person specified in subsections (5)(a) through (5)(c);

(e) a domestic or foreign:

(A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which an individual is a director;

(B) unincorporated entity of which an individual is a general partner or a member of the governing body; or

(C) individual, trust, or estate for whom or of which an individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) a person that is or an entity that is controlled by an employer of an individual.

(6) "Relevant time" means:

(a) the time at which directors' action respecting the transaction is taken in compliance with [section 131]; or

(b) if the transaction is not brought before the board of directors or a committee for action under [section 131], the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(a) the existence and nature of the director's conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that a director free of that conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

NEW SECTION. **Section 130. Judicial action.** (1) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief or give

rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(2) A director's conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the grounds that the director has an interest respecting the transaction if:

(a) directors' action respecting the transaction was taken in compliance with [section 131] at any time;

(b) shareholders' action respecting the transaction was taken in compliance with [section 132] at any time; or

(c) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

NEW SECTION. **Section 131. Directors' action.** (1) Directors' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(a)] if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by the qualified directors or after modified disclosure in compliance with subsection (2), provided that:

(a) the qualified directors have deliberated and voted outside the presence of and without participation by any other director; and

(b) if the action has been taken by a board committee, all members of the committee were qualified directors and either:

(i) the committee was composed of all the qualified directors on the board of directors; or

(ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(2) Notwithstanding subsection (1), when a transaction is a director's conflicting interest transaction only because a related person of the director is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(a) all information required to be disclosed that is not violative of the duty, obligation, or rule;

(b) the existence and nature of the director's conflicting interest; and

(c) the nature of the conflicted director's duty not to disclose the confidential information.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the board committee constitutes a quorum for purposes of action that complies with this section.

(4) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a board committee, in which directors who are not qualified directors may participate.

NEW SECTION. **Section 132. Shareholders' action.** (1) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(b)] if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(a) notice to shareholders describing the action to be taken respecting the transaction;

(b) provision to the corporation of the information referred to in subsection (2); and

(c) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote must be determined as of the record date for notice of the meeting.

(2) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (3), and of the identity of the holders of those shares.

(3) For purposes of this section:

(a) "holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) "qualified shares" means all shares entitled to be voted with respect to the transaction except shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows or under subsection (2) is informed are held by:

(i) a director who has a conflicting interest respecting the transaction; or

(ii) a related person of the director, excluding a person described in [section 129(5)(f)].

(4) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (5), shareholders' action that otherwise complies with this section is not affected by the presence of holders of or by the voting of shares that are not qualified shares.

(5) If a shareholders' vote does not comply with subsection (1) solely because of a director's failure to comply with subsection (2) and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take any action respecting the transaction and the director, and may give any effect to the shareholders' vote, that the court considers appropriate in the circumstances.

(6) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which shares that are not qualified shares may participate.

NEW SECTION. **Section 133. Business opportunities.** (1) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(a) before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 131]; or

(ii) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 132], in either case as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in [section 129], the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(b) the duty to offer the corporation the business opportunity has been limited or eliminated pursuant to

a provision of the articles of incorporation adopted and, if required, made effective by action of qualified directors in accordance with [section 28(2)(f)].

(2) In any proceeding seeking equitable relief or other remedies based on an alleged improper pursuit or taking advantage of a business opportunity by a director or officer directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (1)(a)(ii) before pursuing or taking advantage of the opportunity does not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

NEW SECTION. **Section 134. Definitions -- domestication -- conversion.** As used in [sections 134 through 148] the following definitions apply:

(1) "Conversion" means a transaction pursuant to [sections 143 through 148].

(2) "Converted entity" means the converting entity as it continues in existence after a conversion.

(3) "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion pursuant to [section 145] or the foreign eligible entity that approves a conversion pursuant to the organic law of the eligible entity.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to [section 139] or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(6) "Domestication" means a transaction pursuant to [sections 138 through 142].

(7) "Protected agreement" means:

(a) a document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before the enactment date;

(b) an agreement that is binding on a domestic corporation or eligible entity immediately before the enactment date;

(c) the articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before the enactment date; or

(d) an agreement that is binding on any of the shareholders, members, interest holders, directors, or

other governors of a domestic corporation or eligible entity, in their official capacities, immediately before the enactment date. For purposes of [sections 138 and 143] and this subsection (7), "enactment date" means the earliest date on which the laws of this state authorized a transaction having the effect of a domestication or a conversion, as applicable.

NEW SECTION. **Section 135. Excluded transactions.** (1) [Sections 134 through 148] may not be used to effect a transaction that:

(a) converts or domesticates a company organized on the mutual principle to one organized on the basis of share ownership;

(b) converts or domesticates banks and trust companies regulated under Title 32, chapter 1;

(c) converts or domesticates building and loan associations regulated under Title 32, chapter 2;

(d) converts or domesticates credit unions regulated under Title 32, chapter 3; or

(e) converts or domesticates insurance companies regulated under Title 33.

(2) The conversion of a domestic corporation to a domestic benefit corporation is governed by Title 35, chapter 1, part 14, and not by [sections 134 through 148].

NEW SECTION. **Section 136. Required approvals.** If a domestic or foreign corporation or eligible entity may not be a party to a merger without the approval of the attorney general, the state auditor, the department of administration, or the public service commission and the applicable statutes or regulations do not specifically deal with transactions under [sections 134 through 148] but do require approval by one of those agencies or officials for mergers, a corporation or eligible entity may not be a party to a transaction under [sections 134 through 148] without the prior approval of that agency or official.

NEW SECTION. **Section 137. Relationship to other laws.** A transaction effected under [sections 134 through 148] does not create or impair a right, duty, or obligation of a person under the laws of this state other than [sections 134 through 148] relating to a change in control, business combination, control-share acquisition, or a similar transaction involving a domesticating or converting domestic corporation unless the approval of the plan of domestication or conversion is by a vote of the shareholders or the board of directors that would be sufficient to create or impair the right, duty, or obligation directly under that law.

NEW SECTION. **Section 138. Domestication.** (1) By complying with the provisions of [sections 138 through 142] applicable to foreign corporations, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of [sections 138 through 142], a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) The plan of domestication must include:

(a) the name of the domesticating corporation;

(b) the name and jurisdiction of formation of the domesticated corporation;

(c) the manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination;

(d) the proposed articles of incorporation and bylaws of the domesticated corporation; and

(e) the other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) If a protected agreement of a domestic domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 139. Action on plan of domestication.** In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication must be adopted in the following manner:

(1) The plan of domestication must first be adopted by the board of directors.

(2) (a) The plan of domestication must then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special

circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of domestication by the shareholders or for the effectiveness of the plan of domestication.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of domestication requires the approval of a majority of the votes entitled to be cast on the plan and, except as provided in subsection (6), the approval of a majority of the votes entitled to be cast on the plan by any class or series of shares entitled to vote as a separate group on the plan. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights in subsection (5) of any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under [section 152] if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation would become subject to interest holder liability, approval of the plan of domestication must require the signing in connection with the domestication, by each affected shareholder, of a separate written consent to become subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other

than changes that eliminate or reduce that interest holder liability.

NEW SECTION. **Section 140. Articles of domestication -- effectiveness.** (1) After:

(a) a plan of domestication of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a foreign corporation that is a domesticating corporation has approved a domestication as required under its organic law, articles of domestication must be signed by the domesticating corporation. The articles must set forth:

(i) the name of the domesticating corporation and its jurisdiction of formation;

(ii) the name of the domesticated corporation and its jurisdiction of formation; and

(iii) if the domesticating corporation is:

(A) a domestic corporation, a statement that the plan of domestication was approved in accordance with [sections 134 through 148]; or

(B) a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(2) If the domesticated corporation is a domestic corporation, the articles of domestication must have attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28]. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(3) The articles of domestication must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the domestication becomes effective on the later of:

(a) the date and time provided by the organic law of the domesticated corporation; or

(b) the date the articles of domestication are effective.

(5) If the domesticating corporation is a foreign corporation that is registered to do business in this state under [sections 203 through 214], its registration statement is canceled automatically when the domestication becomes effective.

NEW SECTION. **Section 141. Amendment of plan of domestication -- abandonment.** (1) A plan of domestication of a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination to be received by any of the shareholders of the domesticating corporation under the plan;

(ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective except changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in the plan; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the secretary of state for filing but before the articles of domestication have become effective, articles of abandonment signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the domesticating corporation;

(b) the date on which the articles of domestication were filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

NEW SECTION. **Section 142. Effect of domestication.** (1) When a domestication becomes effective:

(a) all property owned by and every contract right possessed by the domesticating corporation are the

property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and liabilities of the domesticated corporation;

(c) the name of the domesticated corporation may be but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) the articles of incorporation and bylaws of the domesticated corporation become effective;

(e) the shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) the domesticated corporation is:

(i) incorporated under and subject to the organic law of the domesticated corporation;

(ii) the same corporation without interruption as the domesticating corporation; and

(iii) considered to have been incorporated on the date the domesticating corporation was originally incorporated.

(2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability with respect to the domesticating corporation before the domestication becomes effective is as follows:

(a) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(b) The provisions of the organic law of the domesticating corporation continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not

occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(4) A shareholder who becomes subject to interest holder liability with respect to the domesticated corporation as a result of the domestication has that interest holder liability only with respect to interest holder liabilities that arise after the domestication becomes effective.

(5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

NEW SECTION. **Section 143. Conversion.** (1) By complying with [sections 143 through 148], a domestic corporation may become:

(a) a domestic eligible entity; or

(b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

(2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic

eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through 148]. For purposes of applying [sections 143 through 148]:

(a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a business corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting corporation in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 144. Plan of conversion.** (1) A domestic corporation may convert to a domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan of conversion must include:

(a) the name of the converting corporation;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination;

(d) the other terms and conditions of the conversion; and

(e) the full text that will be in effect immediately after the conversion becomes effective of the organic rules of the converted entity, which must be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside

the plan in accordance with [section 3(11)].

NEW SECTION. **Section 145. Action on plan of conversion.** In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors.

(2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or for the effectiveness of the plan of conversion.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in writing as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation

would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the interest holder liability.

NEW SECTION. **Section 146. Articles of conversion -- effectiveness.** (1) After:

(a) a plan of conversion of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, articles of conversion must be signed by the converting entity and must:

(i) state the name, jurisdiction of formation, and type of entity of the converting entity;

(ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

(iii) if the converting entity is:

(A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections 143 through 148]; or

(B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with its organic law; or

(II) a domestic eligible entity the organic law of which does not provide for approval of the conversion, state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through 148]; and

(iv) if the converted entity is:

(A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached the public organic record of the converted entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

(B) a domestic limited liability partnership, have attached the filing required to become a limited liability partnership.

(2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of [section 28], except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that the public organic record does not need to be signed.

(3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the conversion itself becomes effective on the later of:

(a) the date and time provided by the organic law of that eligible entity; or

(b) the date the articles of conversion become effective.

(5) Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing satisfies the requirements of both the other organic law and this section.

(6) If the converting entity is a foreign eligible entity that is registered to do business in this state under a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign qualification is canceled automatically on the effective date of its conversion.

NEW SECTION. **Section 147. Amendment of plan of conversion -- abandonment.** (1) A plan of conversion of a converting entity that is a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination to be received by any of the shareholders of the converting corporation under the plan;

(ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes effective except changes that do not require approval of the eligible interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in any material respect.

(2) After a plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by [sections 143 through 148] and before the articles of conversion become effective, the

plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of state for filing and before the articles of conversion become effective, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the converting entity;

(b) the date on which the articles of conversion were filed by the secretary of state; and

(c) a statement that the conversion has been abandoned in accordance with this section.

NEW SECTION. **Section 148. Effect of conversion.** (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting entity remain the property and contract rights of the converted entity without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and other liabilities of the converted entity;

(c) the name of the converted entity may be but need not be substituted for the name of the converting entity in any pending action or proceeding;

(d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) if the converted entity is a nonfiling entity, its private organic rules become effective;

(f) if the converted entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity; and

(h) the converted entity is:

(i) incorporated or organized under and subject to the organic law of the converted entity;

(ii) the same entity without interruption as the converting entity; and

(iii) considered to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability with respect to that converting eligible entity before the conversion becomes effective is as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(c) The eligible interest holder has the rights of contribution from other persons that are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

(5) A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after the conversion inures to the converted entity.

(8) A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

NEW SECTION. **Section 149. Authority to amend.** (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

NEW SECTION. **Section 150. Amendment before issuance of shares.** If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

NEW SECTION. **Section 151. Amendment by board of directors and shareholders.** If a corporation has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

(1) The proposed amendment must first be adopted by the board of directors.

(2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or for the effectiveness of the amendment.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability, the terms and conditions of the new interest holder liability:

(a) are substantially identical to those of the existing interest holder liability; or

(b) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce that interest holder liability.

(7) For purposes of [section 157] and subsection (6) of this section, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if:

(a) the person did not have interest holder liability before the amendment becomes effective; or

(b) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

NEW SECTION. **Section 152. Voting on amendments by voting groups.** (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment would:

(a) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(c) change the rights, preferences, or limitations of all or part of the shares of the class;

(d) change the shares of all or part of the class into a different number of shares of the same class;

(e) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(g) limit or deny an existing preemptive right of all or part of the shares of the class; or

(h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to [section 151(3)].

(4) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

NEW SECTION. **Section 153. Amendment by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) if the corporation has only one class of shares outstanding:

(a) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) to delete a class of shares from the articles of incorporation as a result of the operation of [section 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder approval.

NEW SECTION. **Section 154. Articles of amendment.** (1) After an amendment to the articles of incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

(a) the name of the corporation;

(b) the text of each amendment adopted or the information required by [section 3(11)(e)];

(c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section 3(11)(e)];

(d) the date of each amendment's adoption; and

(e) if an amendment:

(i) was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval was not required;

(ii) required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

(iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

(2) Articles of amendment take effect on the effective date determined in accordance with [section 6].

NEW SECTION. **Section 155. Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(2) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in [section 151].

(3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) a statement that the restated articles consolidate all amendments into a single document; and

(d) if a new amendment is included in the restated articles, the statements required under [section 154] with respect to the new amendment.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(5) The secretary of state may certify restated articles of incorporation as the articles of incorporation

currently in effect without including the statements required by subsection (3)(d).

NEW SECTION. **Section 156. Amendment pursuant to reorganization.** (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

NEW SECTION. **Section 157. Effect of amendment.** (1) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability with respect to the corporation as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect to interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder liability of a shareholder who had interest holder liability with respect to the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in

effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the articles of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

NEW SECTION. **Section 158. Authority to amend.** (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power exclusively to the shareholders in whole or part; or

(b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(3) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

NEW SECTION. **Section 159. Bylaw increasing quorum or voting requirement for directors.** (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise; or

(b) if adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 160. Bylaw provisions relating to election of directors.** (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the votes;

(b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the date that is the earlier of:

(i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

(ii) the date on which an individual is selected by the board of directors to fill the office held by the director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

(iii) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides

otherwise;

(b) if adopted by the board of directors, by the board of directors or the shareholders.

NEW SECTION. **Section 161. Definitions -- mergers and share exchanges.** As used in [sections 161 through 168], the following definitions apply:

(1) "Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

(3) "New interest holder liability" means interest holder liability of a person resulting from a merger or share exchange that is:

(a) with respect to an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or

(b) with respect to the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:

(i) the person did not have interest holder liability immediately before the merger or share exchange became effective; or

(ii) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(5) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one or more other corporations or eligible entities are merged.

NEW SECTION. **Section 162. Merger.** (1) By complying with [sections 161 through 168]:

(a) one or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

(b) two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

(2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign

business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity, and the merger may then be effected as provided in the other provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

(a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of merger must include:

(a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

(b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property, or any combination;

(e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record; and

(f) any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic rules of the party.

(5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the

plan in accordance with [section 3(11)].

(7) A plan of merger may be amended only with the consent of each party to the merger except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger;

(ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic or foreign nonprofit corporation, or unincorporated entity; or

(iii) any other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 163. Share exchange.** (1) By complying with [sections 161 through 168]:

(a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange; or

(b) all of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange.

(2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that corporation or other entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes of applying [sections 161 through 168]:

(a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of share exchange must include:

(a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests;

(b) the terms and conditions of the share exchange;

(c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; and

(d) any other provisions required by the organic law governing the acquired entity or its articles of incorporation or organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired entity; or

(ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 164. Action on plan of merger or share exchange.** In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be adopted in the following manner:

(1) The plan of merger or share exchange must first be adopted by the board of directors.

(2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their shares to the offeror in response to the offer unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or for the effectiveness of the plan of merger or share exchange.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or

domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or eligible entity.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) Subject to subsection (7), separate voting by voting groups is required:

(a) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; or

(ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under [section 152];

(b) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share exchange:

(a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

(b) will not effect a substantive business combination.

(8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) the corporation will survive the merger;

(b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

(c) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the effective date of the merger; and

(d) the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under [section 51(6)].

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domestic corporation:

(a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and

(b) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

(10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of merger or share exchange is not required if:

(a) the plan of merger or share exchange expressly:

(i) permits or requires the merger or share exchange to be effected under this subsection (10); and

(ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f);

(b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the

offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

(c) the offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subsection (10)(h);

(d) the offer remains open for at least 10 days;

(e) the offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) the following shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168] and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) shares purchased by the offeror in accordance with the offer;

(ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of them; and

(iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible interests in the offeror, parent, or subsidiary;

(g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration described in this subsection (10)(h).

(11) As used in subsection (10):

(a) "offer" means the offer referred to in subsection (10)(b);

(b) "offeror" means the person making the offer;

(c) "parent" of an entity means a person that owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(d) shares tendered in response to the offer are considered to have been "purchased" in accordance with the offer at the earliest time that:

(i) the offeror has irrevocably accepted those shares for payment; and

(ii) either:

(A) in the case of shares represented by certificates, the offeror or the offeror's designated depository or other agent has physically received the certificates representing those shares; or

(B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "wholly owned subsidiary" of a person means an entity of which or in which that person owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(12) Unless the articles of incorporation provide otherwise:

(a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

NEW SECTION. **Section 165. Merger between parent and subsidiary or between subsidiaries.** (1) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

(a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power of each class and series of the outstanding shares or eligible interests that have voting power; or

(b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this

section do not need to be signed by the subsidiary.

(2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary's shareholders that the merger has become effective. The notice must include:

(a) a copy of the plan of merger; or

(b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be furnished, upon request and at no cost, to any shareholder of any party to the merger.

(3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers generally.

NEW SECTION. **Section 166. Articles of merger or share exchange.** (1) After a plan of merger has been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)]. The articles must set forth:

(a) the name, jurisdiction of formation, and type of entity of each party to the merger;

(b) the name, jurisdiction of formation, and type of entity of the survivor;

(c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended or if a new domestic corporation is created as a result of the merger:

(i) the amendments to the survivor's articles of incorporation; or

(ii) the articles of incorporation of the new corporation;

(d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or if a new domestic eligible entity is created as a result of the merger:

(i) the amendments to the public organic record of the survivor; or

(ii) the public organic record of the new eligible entity;

(e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and the articles of incorporation;

(f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) as to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized as required by its organic law;

(h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or [section 162(3)]; and

(i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required to become a limited liability partnership, as an attachment.

(2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be signed by the acquired entity and the acquiring entity. The articles must set forth:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible entity that is the acquiring entity; and

(c) a statement that the plan of share exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of shares or eligible interests included in the exchange; and

(ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section 163(3)].

(3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5), the merger or share exchange takes effect on the effective date determined in accordance with [section 6].

(5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created by the merger is the survivor, the merger itself becomes effective on the later of:

(a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become effective; or

(b) the date the articles of merger take effect.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both that organic law and this section.

NEW SECTION. **Section 167. Effect of merger or share exchange.** (1) When a merger becomes effective:

(a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases;

(c) all property owned by and every contract right possessed by each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

(e) the name of the survivor may be but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger;

(g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective;

(h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are converted, and the former holders of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign corporation;

(i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges,

franchises, and immunities of the survivor; and

(j) if the survivor exists before the merger:

(i) all the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

(ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

(iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under the organic law governing the acquired entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability with respect to an entity as a result of a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of the party or acquired entity:

(i) that were exchanged in the merger or share exchange;

(ii) that were cancelled in the merger; or

(iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, the following provisions apply:

(A) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(B) The provisions of the organic law governing any entity for which the person had that prior interest holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(C) The person has the rights of contribution from other persons that are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(D) The person may not by reason of that prior interest holder liability have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on that interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of the merger is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under [sections 171 through 183].

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the laws of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

NEW SECTION. **Section 168. Abandonment of merger or share exchange.** (1) After a plan of merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business corporation that is a party to the plan without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment signed by all the parties that signed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

(c) a statement that the merger or share exchange has been abandoned in accordance with this section.

NEW SECTION. **Section 169. Disposition of assets not requiring shareholder approval.** No approval of the shareholders is required, unless the articles of incorporation provide otherwise:

(1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course of business;

(3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's

shares.

NEW SECTION. **Section 170. Shareholder approval of certain dispositions.** (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation is conclusively held to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least:

(a) 25% of total assets at the end of the most recently completed fiscal year; and

(b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing operations, in each case for the most recently completed fiscal year.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval by the shareholders of a disposition or for the effectiveness of the disposition.

(4) If a disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series

of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this section.

NEW SECTION. **Section 171. Definitions -- appraisal rights.** For the purposes of [sections 171 through 183], the following definitions apply:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive of another person. For purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

(2) "Beneficial owner" means any person who directly, or indirectly through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares. However, a member of a national securities exchange is not considered a beneficial owner of securities held directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed is held to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation that are beneficially owned by any member of the group.

(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

(4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value

equal to or less than that paid in connection with the corporate action.

(5) "Fair value" means the value of the corporation's shares determined:

(a) immediately before the effectiveness of the corporate action to which the shareholder objects;

(b) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to [section 172(1)(d)].

(6) "Interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) "Interested person" means a person or an affiliate of a person who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

(a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(c) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders, other than:

(i) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section 131]; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director or governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

(8) "Interested transaction" means a corporate action described in [section 172(1)], other than a merger pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

NEW SECTION. **Section 172. Right to appraisal.** (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 164] or would be required but for the provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) the corporation is a subsidiary and the merger is governed by [section 165];

(b) consummation of a share exchange to which the corporation is a party the shares of which will be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series if:

(i) under the terms of the corporate action approved by the shareholders, the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are to be distributed to shareholders in cash:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of distribution; and

(ii) the disposition of assets is not an interested transaction;

(d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share created;

(e) any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of the board of directors;

(f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication;

(g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143]; or

(h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 143].

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;

(ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more than 10% of those shares; or

(iii) issued by an open-end management investment company registered with the United States securities and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) must be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant to [section 164(10)], the date of the offer; or

(ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for

the holders of any class or series of shares:

(i) who are required by the terms of the corporate action requiring appraisal rights to accept for those shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the corporate action becomes effective; or

(ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189 and 190]:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of the distribution.

(d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) no limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143] or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

(b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within 1 year after the effective date of the amendment if the action would otherwise afford appraisal rights.

NEW SECTION. **Section 173. Assertion of rights -- nominees -- beneficial shareholders.** (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record

shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(a) submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in [section 176(2)(b)(ii)]; and

(b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

NEW SECTION. **Section 174. Notice of appraisal rights.** (1) When any corporate action specified in [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in [section 176].

(3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the shareholders pursuant to [section 64]:

(a) written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of [sections 171 through 183]; and

(b) written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of [sections 171 through 183].

(4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (2) must be accompanied by:

(a) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of the notice, an income statement for that year, and a cash flow statement for that year, provided that if those financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) the latest interim financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action.

NEW SECTION. **Section 175. Notice of intent to demand payment -- consequences of voting or consenting.** (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the proposed action.

(2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor of the proposed action with respect to that class or series of shares.

(3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice

of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not tender or cause or permit to be tendered any shares of that class or series in response to the offer.

(4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 176. Appraisal notice and form.** (1) If a corporate action requiring appraisal rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2), or (3)]. In the case of a merger under [section 165], the parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be delivered no earlier than the date the corporate action specified in [section 172(1)] became effective and no later than 10 days after that date and must:

(a) supply a form that:

(i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action; and

(ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;

(b) state:

(i) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which may not be earlier than the date by which the corporation must receive the required form under subsection (2)(b)(ii);

(ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than 60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10

days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under [section 177] must be received, which must be within 20 days after the date specified in subsection (2)(b)(ii) of this section; and

(c) be accompanied by a copy of [sections 171 through 183].

NEW SECTION. **Section 177. Perfection of rights -- right to withdraw.** (1) A shareholder who receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)]. In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to [section 176(2)(b)(v). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in [section 176(2)], is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 178. Payment.** (1) Except as provided in [section 179], within 30 days after the form required by [section 176(2)(b)(ii)] is due, the corporation shall pay in cash to those shareholders who complied with [section 177(1)] the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) must be accompanied by:

(a) (i) financial statements of the corporation that issued the shares to be appraised, consisting of a

balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year or, if those annual financial statements are not reasonably available, reasonably equivalent financial information; and

(ii) the latest interim financial statements of the corporation, if any;

(b) a statement of the corporation's estimate of the fair value of the shares, which must equal or exceed the corporation's estimate given pursuant to [section 176(2)(b)(iii)]; and

(c) a statement that shareholders described in subsection (1) of this section have the right to demand further payment under [section 180] and that if any shareholder does not do so within the time period specified in [section 180(2)], the shareholder is considered to have accepted the payment under subsection (1) of this section in full satisfaction of the corporation's obligations under [sections 171 through 183].

NEW SECTION. **Section 179. After-acquired shares.** (1) A corporation may elect to withhold payment required by [section 178] from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to [section 176(2)(a)].

(2) If the corporation elected to withhold payment under subsection (1) of this section, it shall, within 30 days after the form required by [section 176(2)(b)(ii)] is due, notify all shareholders who are described in subsection (1) of this section:

(a) of the information required by [section 178(2)(a)];

(b) of the corporation's estimate of fair value pursuant to [section 178(2)(b)];

(c) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under [section 180];

(d) that those shareholders who wish to accept the offer shall notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(e) that those shareholders who do not satisfy the requirements for demanding appraisal under [section 180] are considered to have accepted the corporation's offer.

(3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in

cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in subsection (2)(e).

NEW SECTION. **Section 180. Procedure if shareholder dissatisfied with payment or offer.** (1) A shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179] who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

NEW SECTION. **Section 181. Judicial appraisal of shares -- court action.** (1) If a shareholder makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180], plus interest.

(2) The corporation shall commence the proceeding in the district court of the county in which its principal office is located or, if its principal office is not located in this state, in the first judicial district.

(3) The corporation shall make all shareholders, regardless of whether they are residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them

or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for the shares, plus interest; or

(b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under [section 179].

NEW SECTION. **Section 182. Court costs -- expenses.** (1) The court in an appraisal proceeding commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(2) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

(b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180], any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit.

NEW SECTION. **Section 183. Other remedies limited.** (1) The legality of a proposed or completed

corporate action described in [section 172(1)] may not be contested, and the corporate action may not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) does not apply to a corporate action that:

(a) was not authorized and approved in accordance with the applicable provisions of:

(i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169 and 170];

(ii) the articles of incorporation or bylaws; or

(iii) the resolution of the board of directors authorizing the corporate action;

(b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) is an interested transaction unless it has been recommended by the board of directors in the manner provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as if the interested transaction were a director's conflicting interest transaction; or

(d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

NEW SECTION. **Section 184. Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(i) that none of the corporation's shares has been issued; or

(ii) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

NEW SECTION. **Section 185. Dissolution by board of directors and shareholders.** (1) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution unless:

(i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

NEW SECTION. **Section 186. Articles of dissolution.** (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date that dissolution was authorized; and

(c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(2) The articles of dissolution take effect on the effective date determined in accordance with [section 6]. A corporation is dissolved on the effective date of its articles of dissolution.

(3) For purposes of [sections 184 through 192], "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

NEW SECTION. **Section 187. Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days after its effective date.

(2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(g) The articles of revocation of dissolution take effect on the effective date determined in accordance with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.

(h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

NEW SECTION. **Section 188. Effect of dissolution.** (1) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) making distributions of its remaining assets among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities;

(c) subject its directors or officers to standards of conduct different from those prescribed in [sections 93 through 133];

(d) change:

(i) quorum or voting requirements for its board of directors or shareholders;

(ii) provisions for selection, resignation, or removal of its directors or officers or both; or

(iii) provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the corporation.

(3) A distribution in liquidation under this section may be made only by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be

retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

NEW SECTION. **Section 189. Known claims against dissolved corporation.** (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

NEW SECTION. **Section 190. Other claims against dissolved corporations.** (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) be:

(i) published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located; or

(ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation's website;

(b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the first publication date of the notice:

(a) a claimant who was not given written notice under [section 189];

(b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

NEW SECTION. **Section 191. Court proceedings.** (1) A dissolved corporation that has published a notice under [section 190] may file an application with the district court of the county where its principal office is located or, if its principal office is not located in this state, of the first judicial district for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [section 190(3)].

(2) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all

reasonable expert witness fees, must be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and those claims may not be enforced against a shareholder who received assets in liquidation.

NEW SECTION. **Section 192. Director duties.** (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment of or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191] may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are barred or satisfied under [sections 189 through 191].

NEW SECTION. **Section 193. Grounds for administrative dissolution.** The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within 60 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

NEW SECTION. **Section 194. Procedure for and effect of administrative dissolution.** (1) If the secretary of state determines that one or more grounds exist under [section 193] for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds

for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

NEW SECTION. **Section 195. Reinstatement following administrative dissolution.** (1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) state that the corporation's name satisfies the requirements of [section 39]; and

(d) contain a certificate from the department of revenue reciting that all taxes imposed pursuant to Title 15 have been paid.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

NEW SECTION. **Section 196. Appeal from denial of reinstatement.** (1) If the secretary of state denies

a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under [section 45] with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 197. Grounds for judicial dissolution.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation

is insolvent;

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of the shares.

(3) For the purposes of this section:

(a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) the term "shareholder" in subsection (2) means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

NEW SECTION. **Section 198. Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares

under [section 201] and accompanied by a copy of [section 201].

NEW SECTION. **Section 199. Receivership or custodianship.** (1) Unless an election to purchase has been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) the receiver:

(A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale; and

(B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state;

(ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(b) The receiver or custodian has other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

NEW SECTION. **Section 200. Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 197] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance with [sections 189 and 190].

NEW SECTION. **Section 201. Election to purchase in lieu of dissolution.** (1) Unless the transfer is altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and number of shares owned by the petitioner and the name of and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and

terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares on the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or another date the court finds appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase on terms and conditions the court finds appropriate, which may include payment of the purchase price in installments when necessary in the interests of equity, provision for security to ensure payment of the purchase price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes or series as far as practicable and may direct that holders of a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the order becomes final.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

NEW SECTION. **Section 202. Deposit with state treasurer.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate

state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person or the person's representative that amount.

NEW SECTION. **Section 203. Foreign corporations -- governing law.** (1) The law of the jurisdiction of formation of a foreign corporation governs:

(a) the internal affairs of the foreign corporation; and

(b) the interest holder liability of its shareholders.

(2) A foreign corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

(3) Registration of a foreign corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic corporation may not engage in or exercise in this state.

NEW SECTION. **Section 204. Registration to do business in this state.** (1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) The failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

(5) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through 214].

NEW SECTION. **Section 205. Foreign registration statement.** To register to do business in this state, a foreign corporation shall deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the foreign corporation and state:

(1) the corporate name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(2) the foreign corporation's jurisdiction of formation;

(3) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers;

(6) a brief description of the nature of its business to be conducted in this state; and

(7) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

NEW SECTION. **Section 206. Amendment of foreign registration statement.** A registered foreign corporation shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its jurisdiction of formation unless its registration is determined to have been withdrawn under [section 210] or transferred under [section 212]; or

(3) an address required by [section 205(3)].

NEW SECTION. **Section 207. Activities not constituting doing business.** (1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is not in the course of similar transactions; and

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

NEW SECTION. **Section 208. Noncomplying name of foreign corporation.** (1) A foreign corporation whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with [section 39] by filing a foreign registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212] setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do business in this state with an alternate name, a foreign corporation shall do business in this state under:

(a) the alternate name;

(b) the foreign corporation's name, with the addition of its jurisdiction of formation; or

(c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

(2) If a registered foreign corporation changes its name after registration to a name that does not comply with [section 39], it may not do business in this state until it complies with subsection (1) of this section by amending its registration statement to adopt an alternate name that complies with [section 39].

NEW SECTION. **Section 209. Withdrawal of registration of registered foreign corporation.** (1) A registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

(a) the name of the foreign corporation and its jurisdiction of formation;

(b) that the foreign corporation is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign corporation revokes the authority of its registered agent in this state;

(d) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(e) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(f) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 210. Withdrawal upon domestication or conversion to certain domestic entities.** A registered foreign corporation that domesticates to a domestic business corporation or converts to a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership is considered to have withdrawn its registration on the effective date of that event.

NEW SECTION. **Section 211. Withdrawal upon dissolution or conversion to nonfiling entities.** (1) A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic or foreign nonfiling entity and must state:

(a) in the case of a foreign corporation that has completed winding up:

(i) its name and jurisdiction of formation;

(ii) that the foreign corporation withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iii) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(iv) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(v) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation; or

(b) in the case of a foreign corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting foreign corporation and its jurisdiction of formation;

(ii) the type of the nonfiling entity to which it has converted and its name and jurisdiction of formation;

(iii) that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iv) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(v) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(vi) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 212. Transfer of registration.** (1) If a registered foreign corporation merges into a nonregistered foreign corporation or converts to a foreign corporation required to register with the secretary of state to do business in this state, the foreign corporation shall deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or

converted foreign corporation and must state:

(a) the name of the registered foreign corporation and its jurisdiction of formation before the merger or conversion;

(b) the name of the surviving or converted foreign corporation and its jurisdiction of formation after the merger or conversion and, if the name does not comply with [section 39], an alternate name adopted pursuant to [section 208]; and

(c) the following information regarding the surviving or converted foreign corporation after the merger or conversion:

(i) the street and mailing addresses of the principal office of the foreign corporation and, if the law of the foreign corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office.

(2) On the effective date of a transfer of registration statement as determined in accordance with [section 6], the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign corporation into which it has merged or to which it has been converted.

NEW SECTION. **Section 213. Administrative termination of registration.** (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within 60 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) The secretary of state may terminate the registration of a registered foreign corporation by:

(a) filing a certificate of termination; and

(b) delivering a copy of the certificate of termination to the foreign corporation's registered agent or, if the foreign corporation does not have a registered agent, to the foreign corporation's principal office.

(3) The certificate of termination must state:

(a) the effective date of the termination, which must be not less than 90 days after the secretary of state delivers the copy of the certificate of termination as prescribed in subsection (2)(b); and

(b) the grounds for termination under subsection (1).

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination unless before that date the foreign corporation cures each ground for termination stated in the certificate of termination. If the foreign corporation cures each ground, the secretary of state shall file a statement that the certificate of termination is withdrawn.

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 214. Action by attorney general.** The attorney general may maintain an action to enjoin a foreign corporation from doing business in this state in violation of [sections 1 through 221].

NEW SECTION. **Section 215. Corporate records.** (1) A corporation shall maintain the following records:

(a) its articles of incorporation as currently in effect;

(b) any notices to shareholders referred to in [section 3(11)(e)] specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in [section 3(11)(e)];

(c) its bylaws as currently in effect;

(d) all written communications within the past 3 years to shareholders generally;

(e) minutes of all meetings of and records of all actions taken without a meeting by its shareholders, its board of directors, and board committees established under [section 109];

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 221].

(2) A corporation shall maintain all annual financial statements prepared for the corporation for its last 3 fiscal years or any shorter period of existence and any audit or other reports with respect to those financial statements.

(3) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(4) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the address of and the number and class or series of shares held by each shareholder. Nothing in this subsection requires the corporation to include in the record the electronic mail address or other electronic contact information of a shareholder.

(5) A corporation shall maintain the records specified in this section in a manner that allows them to be made available for inspection within a reasonable time.

NEW SECTION. **Section 216. Inspection rights of shareholders.** (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 215(1)], excluding minutes of meetings of and records of actions taken without a meeting by the corporation's board of directors and board committees established under [section 109], if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) the financial statements of the corporation maintained in accordance with [section 215(2)];

(b) accounting records of the corporation;

(c) excerpts from minutes of any meeting of or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with [section 215(1)]; and

(d) the record of shareholders maintained in accordance with [section 215(4)].

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) the shareholder's demand is made in good faith and for a proper purpose;

(b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the

records the shareholder desires to inspect; and

(c) the records are directly connected with the shareholder's purpose.

(4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (2).

(5) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different from the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made the information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide this information does not affect the validity of action taken at the meeting.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(7) This section does not affect:

(a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of production of records described in subsection (2) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (3) of this section.

(8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 217. Scope of inspection right.** (1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under [section 216].

(2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records under [section 216] by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under [section 216(2)(d)] by providing the shareholder with a list of shareholders that was compiled

no earlier than the date of the shareholder's demand.

(4) The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of those costs.

NEW SECTION. **Section 218. Court-ordered inspection.** (1) If a corporation does not allow a shareholder who complies with [section 216(1)] to inspect and copy any records required by that section to be available for inspection, the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder who complies with [section 216(2)] to inspect and copy the records required by that section, the shareholder, if the shareholder also complies with [section 216(3)], may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under [section 216(2)], it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

(a) a reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or

(b) required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

NEW SECTION. **Section 219. Inspection rights of directors.** (1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused

inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

NEW SECTION. **Section 220. Financial statements for shareholders.** (1) Upon the written request of a shareholder, a corporation shall deliver or make available to the requesting shareholder by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the corporation for which annual financial statements have been prepared. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for the specified period, the corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported on by a public accountant, the report must also be delivered or made available to the requesting shareholder.

(2) A corporation shall deliver or make available and provide written notice of availability of the financial statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a written request to the corporation.

(3) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(4) Notwithstanding the provisions of subsections (1) through (3):

(a) as a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of the financial statements; and

(b) the corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

(5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (2) within 5 business days of delivery of the request to the

corporation:

(a) The requesting shareholder may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(b) If the court orders delivery of or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(c) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

(d) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(e) If the court orders delivery of or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

NEW SECTION. **Section 221. Annual report for secretary of state.** (1) Each domestic corporation shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the corporation;

(b) the street and mailing address of its registered office and the name of its registered agent at that office in this state;

(c) the street and mailing address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(b) the foreign corporation's jurisdiction of formation;

(c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(d) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(e) the names and business addresses of its directors and principal officers; and

(f) a brief description of the nature of its business conducted in this state.

(3) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15 of subsequent years.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the notice from the secretary of state becomes effective as determined in accordance with [section 15], it is considered timely filed.

Section 222. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and

associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that

first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity~~, as defined in 35-1-113,~~ that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 223. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation -- application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or the officer's agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation~~ in 35-1-216~~;

(iii) the information required by 35-7-105(1);

(iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 224. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ Title 35, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through

and including the corporation's final year of existence in Montana."

Section 225. Section 20-5-320, MCA, is amended to read:

"20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the

result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

Section 226. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure -- rulemaking authority. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in ~~35-1-310~~ [section 39].

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state."

Section 227. Section 32-1-112, MCA, is amended to read:

"32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of ~~Title 35, chapter 1,~~ [sections 1 through 221] apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with ~~Title 35, chapter 1~~ [sections 1 through 221].

(2) The provisions of [sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216] ~~35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10,~~ do not apply to banks."

Section 228. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in ~~Title 35, chapter 1~~ [sections 1 through 221]. The articles of incorporation must set forth:

(a) the information required by ~~35-1-216(1)~~ [section 28(1)];

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in ~~35-1-216(2)~~ [section 28(2)].

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 229. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in ~~Title 35, chapter 1, part 11~~ [sections 215 through 221]."

Section 230. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock -- rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital

stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity~~, as defined in 35-1-113,~~ that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller

of the currency."

Section 231. Section 33-3-103, MCA, is amended to read:

"33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935~~ [sections 184 through 188] apply to the voluntary dissolution of a domestic insurer."

Section 232. Section 33-3-215, MCA, is amended to read:

"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8,~~ [sections 171 through 183] as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its

policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13."

Section 233. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution. (1) At least 60 days before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-931~~ [section 184], the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required ~~by 35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed

by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 234. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under ~~Title 35, chapter 1, part 9, or~~ Title 35, chapter 2, part 7, or [sections 184 through 202] apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 235. Section 33-3-603, MCA, is amended to read:

"33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under ~~35-1-934 or~~ 35-2-724 or [section 187], the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 236. Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners, including electronically if required by the commissioner, and completed in accordance with instructions provided by the national association of insurance commissioners and the national association of insurance commissioners' accounting practices and procedures manual.

(5) All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at the time of licensure.

(6) (a) The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.

(b) Each risk retention group shall disclose the determinations of independence to the commissioner annually.

(c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.

(ii) A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's immediate family, or any business with which the person is affiliated:

(A) has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group, compensation or payment of any item of value that accounts for either 5%

of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;

(B) has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or

(C) has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.

(7) (a) A material service provider contract with a risk retention group or its renewal:

(i) may not exceed 5 years;

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service

providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of:

(i) the integrity of the financial statements;

(ii) the board's compliance with legal and regulatory requirements; and

(iii) the qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(d) discuss policies with respect to risk assessment and risk management;

(e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(f) review with the independent auditor any audit problems or difficulties and management's response;

(g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(h) require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and

(i) report regularly to the board of directors.

(11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.

(b) For the purposes of this subsection (11), the information must include:

(i) the process by which the directors are elected by the owner or the insureds;

(ii) qualification standards, responsibilities, and compensation for directors;

(iii) director access to management and, as necessary and appropriate, to independent advisors;

(iv) director orientation and continuing education;

(v) management succession policies and procedures; and

(vi) annual board performance evaluation policies and procedures.

(12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.

(b) The code must address:

(i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ director's conflicting interest transactions as defined in [section 129];

(ii) confidentiality;

(iii) fair dealing;

(iv) protection and proper use of risk retention group assets;

(v) compliance with all applicable laws, rules, and regulations; and

(vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

Section 237. Section 33-12-104, MCA, is amended to read:

"33-12-104. Authorization of investments by board of directors. (1) An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least

annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in ~~35-1-418~~ [section 111]."

Section 238. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member, employee, officer, director, or stockholder of a business entity who is acting as an

insurance producer in this state has obtained a license;

(e) (i) with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority~~ registration under ~~35-1-1312~~ [section 11] or filed articles of incorporation under ~~35-1-220~~ [section 29].

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 239. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first ~~obtains from~~ registers with the secretary of state ~~a certificate of authority~~ to transact business in this state as a foreign corporation under ~~35-1-1028~~ [section 204].

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization,

including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the

commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain~~,~~ at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of

every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

Section 240. Section 35-1-1403, MCA, is amended to read:

"35-1-1403. Purpose. (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under ~~35-1-114~~ [section 35] and any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with subsection (2).

(2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote."

Section 241. Section 35-1-1406, MCA, is amended to read:

"35-1-1406. Benefit corporation governance -- liability. (1) A director of a public benefit corporation

shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or group referred to in this subsection (2) over any other factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with this part is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

Section 242. Section 35-1-1407, MCA, is amended to read:

"35-1-1407. Conversion to benefit corporation. (1) A corporation may become a benefit corporation under this part by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the

reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if the conversion is approved by the other entity by at least the minimum status vote."

Section 243. Section 35-1-1408, MCA, is amended to read:

"35-1-1408. Termination -- reorganization -- other actions affecting benefit corporation. (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in ~~35-1-827~~ [section 172]."

Section 244. Section 35-2-826, MCA, is amended to read:

"35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under ~~35-1-309, 35-1-311,~~ 35-2-306, ~~or~~ 35-2-307, [section 40], or [section 41];

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 245. Section 35-4-503, MCA, is amended to read:

"35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in ~~Title 35, chapter 6~~ [sections 193 through 196]."

Section 246. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service of process. (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments or a true copy certified by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under ~~35-1-1028~~ [section 205] and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in the certificate. Service of process, when made upon the agent, is valid service on the business trust."

Section 247. Section 35-6-101, MCA, is amended to read:

"35-6-101. Applicability to corporations presently in default. (1) The secretary of state may initiate procedures consistent with this chapter to dissolve nonprofit corporations organized under Title 35, chapters 2 and 3 ~~that have been in default prior to July 1, 1977~~.

(2) Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections 1 through 221] is governed by [sections 193 through 196].

(3) As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized under Title 35, chapters 4 and 9, or [sections 1 through 221]."

Section 248. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution -- grounds. (1) Any domestic corporation organized under Title 35, chapters 2 and 3, ~~whether for profit or not for profit,~~ may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 249. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution -- procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or~~ 35-2-729~~, whichever is appropriate,~~ is applicable to liquidate the property and assets if necessary."

Section 250. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through 35-1-943 or~~ 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 251. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by ~~35-1-308~~ [section 39].

(4) Contests over names registered under this section are governed by ~~35-1-310~~ [section 39]."

Section 252. Section 35-9-103, MCA, is amended to read:

"35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 253. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of ~~35-1-628~~ [section 57] and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 254. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under ~~Title 35, chapter 1, part 8,~~ [sections 161 through 168] or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 255. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208."

Section 256. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-416~~ [section 93]."

Section 257. Section 35-9-303, MCA, is amended to read:

"35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under

35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

Section 258. Section 35-9-402, MCA, is amended to read:

"35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 259. Section 35-9-404, MCA, is amended to read:

"35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through 35-1-935~~ [sections 184 through 188].

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 260. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections

(3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section 197].

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has ~~dissenters'~~ appraisal rights under this chapter or ~~35-1-826 through 35-1-839~~ [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have."

Section 261. Section 35-9-504, MCA, is amended to read:

"35-9-504. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 262. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

Section 263. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) ~~Such~~ The persons desiring to incorporate ~~must~~ shall prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, ~~such~~ the petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is to be formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which ~~shall~~ may not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. ~~Such~~ The directors or trustees ~~shall~~ must at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for ~~such~~ the incorporation or district, with a description of the lands ~~which~~ that each owns and that are proposed to be submitted to ~~said~~ the corporation or district and the character of the ~~same~~ lands and their production, ~~also~~ as well as a consent of the owners to submit the lands to the provisions ~~hereof~~ of this section;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing ~~the same~~ them in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) ~~Such~~ The petition ~~shall~~ must be accompanied by a map giving location of the lands sought to be included in ~~such~~ the corporation or district, but nothing ~~herein to be~~ in this subsection may be construed as requiring ~~such~~ the lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of ~~such~~ the corporation or district, ~~shall~~ must be filed with the petition."

Section 264. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal

or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association."

Section 265. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in ~~35-1-216~~ [section 28]; and

(b) provisions for classification of members in a cooperative.

(3) A cooperative's articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 266. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge."

Section 267. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed $450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations~~, as defined in 35-1-113,~~ may not apply."

Section 268. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to [sections 1 through 221] or Title 85, chapter 6, part 1, ~~or Title 35, chapter 1, part 2,~~ for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to ~~Title 35, chapter 1, part 2,~~ [sections 1 through 221] or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

NEW SECTION. **Section 269. Repealer.** The following sections of the Montana Code Annotated are repealed:

35-1-112. Short title.
35-1-113. Definitions.
35-1-114. Purposes.
35-1-115. General powers.
35-1-116. Notice.
35-1-117. Ultra vires.
35-1-118. Reservation of power to amend or repeal.
35-1-119. Liability of and to ostensible corporations.
35-1-215. Incorporators.
35-1-216. Articles of incorporation.
35-1-217. Filing requirements.
35-1-218. Facsimile filing -- requirements -- liability.
35-1-219. Effective time and date of document.
35-1-220. Incorporation.
35-1-221. Correcting filed document.
35-1-222. Organization of corporation.
35-1-225. Authority to amend.
35-1-226. Amendment by board of directors.
35-1-227. Amendment by board of directors and shareholders.
35-1-228. Voting on amendments by voting groups.
35-1-229. Amendment before issuance of shares.
35-1-230. Articles of amendment.
35-1-231. Restated articles of incorporation.
35-1-232. Amendment pursuant to reorganization.
35-1-233. Effect of amendment.
35-1-234. Bylaw amendment by board of directors or shareholders.
35-1-235. Extension of duration of corporation.

35-1-236.	Bylaws.
35-1-237.	Emergency bylaws.
35-1-238.	Bylaw increasing quorum or voting requirement for shareholders.
35-1-239.	Bylaw increasing quorum or voting requirement for directors.
35-1-308.	Corporate name.
35-1-309.	Reserved name.
35-1-310.	Contest of registration of name -- penalty.
35-1-311.	Registered name of foreign corporation.
35-1-416.	Requirement for and duties of board of directors.
35-1-417.	Qualifications of directors.
35-1-418.	General standards for directors.
35-1-419.	Number and election of directors.
35-1-420.	Election of directors by certain classes of shareholders.
35-1-421.	Terms of directors generally.
35-1-422.	Staggered terms for directors.
35-1-423.	Resignation of directors.
35-1-424.	Removal of directors.
35-1-425.	Removal of directors by judicial proceeding.
35-1-426.	Vacancy on board.
35-1-427.	Compensation of directors.
35-1-428.	Penalty for signing false document.
35-1-431.	Meetings.
35-1-432.	Action without meeting.
35-1-433.	Notice of meeting.
35-1-434.	Waiver of notice.
35-1-435.	Quorum -- voting.
35-1-439.	Committees.
35-1-441.	Required officers.
35-1-442.	Duties of officers.
35-1-443.	Standards of conduct for officers.

35-1-444.	Resignation and removal of officers.
35-1-445.	Contract rights of officers.
35-1-451.	Definitions.
35-1-452.	Authority to indemnify.
35-1-453.	Mandatory indemnification.
35-1-454.	Advance for expenses.
35-1-455.	Court-ordered indemnification.
35-1-456.	Determination and authorization of indemnification.
35-1-457.	Indemnification of officers, employees, and agents.
35-1-458.	Insurance.
35-1-459.	Application.
35-1-461.	Definitions.
35-1-462.	Judicial action.
35-1-463.	Directors' action.
35-1-464.	Shareholders' action.
35-1-516.	Annual meeting.
35-1-517.	Special meeting.
35-1-518.	Court-ordered meeting.
35-1-519.	Action without meeting.
35-1-520.	Notice of meeting.
35-1-521.	Waiver of notice.
35-1-522.	Record date.
35-1-523.	Shareholders' list for meeting.
35-1-524.	Voting entitlement of shares.
35-1-525.	Proxies.
35-1-526.	Shares held by nominees.
35-1-527.	Corporation's acceptance of votes.
35-1-528.	Quorum and voting requirements for voting groups.
35-1-529.	Action by single and multiple voting groups.
35-1-530.	Greater quorum or voting requirements.

35-1-531.	Voting for directors -- cumulative voting.
35-1-532.	Voting trusts.
35-1-533.	Voting agreements.
35-1-534.	Liability of shareholders.
35-1-535.	Shareholders' preemptive rights.
35-1-541.	Definitions.
35-1-542.	Standing.
35-1-543.	Demand.
35-1-544.	Stay of proceedings.
35-1-545.	Dismissal.
35-1-546.	Discontinuance or settlement -- notice.
35-1-547.	Payment of expenses.
35-1-548.	Applicability to foreign corporations.
35-1-550.	Number of shareholders.
35-1-618.	Authorized shares.
35-1-619.	Terms of class or series determined by board of directors.
35-1-620.	Issued and outstanding shares.
35-1-621.	Fractional shares.
35-1-622.	Subscription for shares before incorporation.
35-1-623.	Issuance of shares.
35-1-624.	Share dividends.
35-1-625.	Share options.
35-1-626.	Form and content of certificates.
35-1-627.	Shares without certificates.
35-1-628.	Restriction on transfer or registration of transfer of shares and other securities.
35-1-629.	Expense of issue.
35-1-630.	Corporation's acquisition of its own shares.
35-1-712.	Distributions to shareholders.
35-1-713.	Liability for unlawful distributions.
35-1-813.	Merger.

35-1-814.	Share exchange.
35-1-815.	Action on plan.
35-1-816.	Articles of merger or share exchange.
35-1-817.	Effect of merger or share exchange.
35-1-818.	Merger of subsidiary.
35-1-819.	Merger or share exchange with foreign corporation.
35-1-820.	Shareholder agreements.
35-1-822.	Sale of assets in regular course of business -- mortgage of assets.
35-1-823.	Sale of assets other than in regular course of business.
35-1-826.	Definitions.
35-1-827.	Right to dissent.
35-1-828.	Dissent by nominees and beneficial owners.
35-1-829.	Notice of dissenters' rights.
35-1-830.	Notice of intent to demand payment.
35-1-831.	Dissenters' notice.
35-1-832.	Duty to demand payment.
35-1-833.	Share restrictions.
35-1-834.	Payment.
35-1-835.	Failure to take action.
35-1-836.	After-acquired shares.
35-1-837.	Procedure if shareholder dissatisfied with payment or offer.
35-1-838.	Court action.
35-1-839.	Court costs and attorney fees.
35-1-931.	Dissolution by incorporators or initial directors.
35-1-932.	Dissolution by board of directors and shareholders.
35-1-933.	Articles of dissolution.
35-1-934.	Revocation of dissolution.
35-1-935.	Effect of dissolution.
35-1-936.	Known claims against dissolved corporation.
35-1-937.	Unknown claims against dissolved corporation.

1	35-1-938.	Grounds for judicial dissolution.
2	35-1-939.	Discretion of court to grant relief other than dissolution.
3	35-1-940.	Procedure for judicial dissolution.
4	35-1-941.	Receivership or custodianship.
5	35-1-942.	Decree of dissolution.
6	35-1-943.	Deposit with state treasurer.
7	35-1-944.	State dissolution or withdrawal certificate.
8	35-1-1026.	Authority to transact business required.
9	35-1-1027.	Consequences of transacting business without authority.
10	35-1-1028.	Application for certificate of authority.
11	35-1-1029.	Amended certificate of authority.
12	35-1-1030.	Effect of certificate of authority.
13	35-1-1031.	Corporate name of foreign corporation.
14	35-1-1037.	Withdrawal of foreign corporation.
15	35-1-1038.	Grounds for revocation.
16	35-1-1039.	Procedure for and effect of revocation.
17	35-1-1040.	Appeal from revocation.
18	35-1-1104.	Annual report for secretary of state.
19	35-1-1106.	Corporate records.
20	35-1-1107.	Inspection of records by shareholders.
21	35-1-1108.	Scope of inspection right.
22	35-1-1109.	Court-ordered inspection.
23	35-1-1110.	Financial statement for shareholders.
24	35-1-1111.	Other reports to shareholders.
25	35-1-1206.	Fees for filing, copying, and services.
26	35-1-1307.	Secretary of state -- powers -- rulemaking.
27	35-1-1308.	Forms.
28	35-1-1309.	Filing duty of secretary of state.
29	35-1-1310.	Appeal from secretary of state's refusal to file document.
30	35-1-1311.	Evidentiary effect of copy of filed document.

35-1-1312. Certificate of existence or authority.

35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

NEW SECTION. **Section 270. Transition -- application to existing domestic corporations.** [Sections 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221] that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

NEW SECTION. **Section 271. Codification instruction.** (1) [Sections 1 through 26] are intended to be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1, apply to [sections 1 through 26].

(2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

(3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

(4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

(5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

(6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part 6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

(7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

(8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

(9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

(10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14, part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

(11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14,

part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

(12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14, part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

(13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14, part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

(14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14, part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

(15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14, part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

(16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14, part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].

NEW SECTION. **Section 272. Saving clause.** (1) Except as to procedural provisions, [sections 1 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].

NEW SECTION. **Section 273. Severability.** If a part of [sections 1 through 221] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 274. Applicability -- existing foreign corporations.** A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] is subject to [sections 1 through 221], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221].

- END -

SENATE BILL NO. 325

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112, 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104,

33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; ~~AND~~ REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 221] may be cited as the "Montana Business Corporation Act".

NEW SECTION. **Section 2. Reservation of power to amend or repeal.** The legislature has power to amend or repeal all or part of [sections 1 through 221] at any time, and all domestic and foreign corporations subject to [sections 1 through 221] are governed by the amendment or repeal.

NEW SECTION. **Section 3. Requirements for documents -- extrinsic facts.** (1) A document must satisfy the requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by [sections 1 through 221] and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing~~. Delivery may be made~~ by electronic transmission ~~if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document~~. THE SECRETARY OF STATE MAY AUTHORIZE EXCEPTIONS TO THE REQUIREMENT OF FILING DOCUMENTS BY ELECTRONIC TRANSMISSION.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the

time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of [sections 1 through 221] except [sections 203 through 214] or [section 221]; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed document;

(ii) the registered office of any entity required in a filed document;

(iii) the registered agent of any entity required in a filed document;

(iv) the number of authorized shares and designation of each class or series of shares;

(v) the effective date of a filed document; and

(vi) any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a document that is a matter of public record and the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

NEW SECTION. **Section 4. Forms.** (1) (a) The secretary of state may prescribe and furnish on request forms for:

(i) an application for a certificate of existence or certificate of registration;

(ii) a foreign corporation's registration statement;

(iii) a foreign corporation's statement of withdrawal;

(iv) a foreign corporation's transfer of registration statement; and

(v) the annual report.

(b) If the secretary of state requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by [sections 1 through 221], but their use is not mandatory.

NEW SECTION. **Section 5. Filing -- service -- copying fees.** (1) The secretary of state shall establish fees for:

(a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];

(b) issuing certificates and statements as required by [sections 1 through 26]; and

(c) copying and transmitting documents, priority handling, and responding to requests for information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

NEW SECTION. **Section 6. Effective date -- filed document.** (1) Except to the extent otherwise

provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

(a) on the date and at the time of filing, as provided in [section 8(2)];

(b) on the date of filing and at the time specified in the document as its effective time if later than the time under subsection (1)(a);

(c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or

(d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(2) If a filed document does not specify the time zone or place at which a date or time or both are to be determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this state.

NEW SECTION. **Section 7. Correcting filed document.** (1) A document filed by the secretary of state pursuant to [sections 1 through 221] may be corrected if:

(a) the document contains an inaccuracy;

(b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

(c) the electronic transmission was defective.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the inaccuracy or defect to be corrected; and

(iii) correct the inaccuracy or defect; and

(b) by delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

NEW SECTION. **Section 8. Filing duty -- secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall return to the person who delivered the document for filing a copy

of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within ~~5~~ 10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not create a presumption that:

(a) the document does or does not conform to the requirements of [sections 1 through 221]; or

(b) the information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

NEW SECTION. **Section 9. Appeal from secretary of state -- refusal to file document.** (1) If the secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing may petition the district court of the first judicial district to compel its filing. The document and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 10. Evidentiary effect -- certified copy of filed document.** A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

NEW SECTION. **Section 11. Certificate of existence or registration.** (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation.

(2) A certificate of existence sets forth:

(a) the domestic corporation's corporate name;

(b) that the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence of the domestic corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state;

(e) that articles of dissolution have not been filed;

(f) that the corporation is not administratively dissolved and a proceeding is not pending under [section 194]; and

(g) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) A certificate of registration sets forth:

(a) the foreign corporation's name used in this state;

(b) that the foreign corporation is registered to do business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the registration of the foreign corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state; and

(e) other facts of record in the office of the secretary of state that may be requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied on as conclusive evidence of the facts stated in the certificate.

NEW SECTION. **Section 12. Penalty -- signing false document.** (1) The execution of any document required to be filed with the secretary of state under [sections 1 through 26] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under [sections 1 through 26].

NEW SECTION. **Section 13. Powers.** (1) The secretary of state has the power reasonably necessary

to perform the duties required of the secretary of state by [sections 1 through 221].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 26], including establishing necessary fees.

NEW SECTION. **Section 14. General definitions.** For the purposes of [sections 1 through 221], unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in [section 28], all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary of state under any provision of [sections 1 through 221] that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under [sections 1 through 221] that restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of the entity means the document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Conspicuous" means written, displayed, or presented so that a reasonable person against whom the writing is to operate should have noticed it.

(5) "Corporation", "domestic corporation", "business corporation", or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under [sections 1 through 221].

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, and commercial delivery and, if authorized in accordance with [section 15], by electronic transmission.

(7) "Distribution" means a direct or indirect transfer of cash or other property except a corporation's own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of:

(a) a payment of a dividend;

(b) a purchase, redemption, or other acquisition of shares;

(c) a distribution of indebtedness;

(d) a distribution in liquidation; or

(e) another form.

(8) "Document" means:

(a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of those instruments; or

(b) an electronic record.

(9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the law of this state.

(10) "Effective date", when referring to a document accepted for filing by the secretary of state, means the time and date determined in accordance with [section 6].

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(13) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) "Eligible interests" means interests or memberships.

(16) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) "Entity" includes:

(a) a domestic and foreign business corporation;

(b) a domestic and foreign nonprofit corporation;

(c) an estate;

(d) a trust;

(e) a domestic and foreign unincorporated entity; and

(f) a state, the United States, and a foreign government.

(18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including attorney fees.

(19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.

(22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.

(23) "Foreign registration statement" means the foreign registration statement described in [section 205].

(24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.

(25) "Governor" means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

(26) "Includes" and "including" denote a partial definition or a nonexclusive list.

(27) "Individual" means a natural person.

(28) "Interest" means either or both of the following rights under the organic law governing an unincorporated entity:

(a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(29) "Interest holder" means a person who holds of record an interest.

(30) (a) "Interest holder liability" means:

(i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or eligible entity that is imposed on a person:

(A) solely by reason of the person's status as a shareholder, member, or interest holder; or

(B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders or categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

(ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

(b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subsection (30)(a) when the corporation or eligible entity incurs the liability.

(31) "Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

(32) "Means" denotes an exhaustive definition.

(33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(34) "Merger" means a transaction pursuant to [section 162].

(35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic record.

(36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

(37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(38) "Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

(39) "Person" includes an individual and an entity.

(40) "Principal office" means the office, whether in this state or out of this state, designated in the annual report or foreign registration statement as the place where the principal executive offices of a domestic or foreign corporation are located.

(41) (a) "Private organic rules" means:

(i) the bylaws of a domestic or foreign business or nonprofit corporation; or

(ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record, if any.

(b) When private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(43) (a) "Public organic record" means:

(i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

(ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates the unincorporated entity and is required to be filed.

(b) When a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(44) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the record date is fixed, the determination must be made as of the close of business at the principal office of the corporation on the record date.

(45) "Record shareholder" means:

(a) the person in whose name shares are registered in the records of the corporation; or

(b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to [section 73] on file with the corporation to the extent of the rights granted by the certificate.

(46) "Registered foreign corporation" means a foreign corporation registered to do business in this state pursuant to [sections 203 through 214].

(47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(48) "Share exchange" means a transaction pursuant to [section 163].

(49) "Shareholder" means a record shareholder.

(50) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation are divided.

(51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed signature; or

(b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, including an electronic signature in an electronic transmission.

(52) "State", when referring to a part of the United States, includes a state, commonwealth, or territory or insular possession of the United States and their agencies and governmental subdivisions.

(53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(54) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following:

(i) a domestic or foreign business or nonprofit corporation;

(ii) a series of a limited liability company or of another type of entity;

(iii) an estate;

(iv) a trust; or

(v) a state, the United States, or a foreign government.

(b) The term includes a general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(56) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(58) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or [sections 1 through 221] are entitled to vote and be counted together collectively on a matter at

a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 221] to vote generally on the matter are for that purpose a single voting group.

(59) "Voting power" means the current power to vote in the election of directors.

(60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to [section 80(1)].

(61) "Writing" or "written" means any information in the form of a document.

NEW SECTION. **Section 15. Notices and other communications.** (1) A notice under [sections 1 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [sections 1 through 221] must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include:

(a) a newspaper of general circulation in the area where published;

(b) radio, television, or other form of public broadcast communication; or

(c) other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10). A CORPORATION THAT FILES DOCUMENTS WITH THE OFFICE OF THE SECRETARY OF STATE UNDER [SECTIONS 1 THROUGH 221] IS CONSIDERED TO HAVE GIVEN ITS IRREVOCABLE CONSENT TO DELIVERY OF NOTICES OR OTHER COMMUNICATIONS BY THE OFFICE OF THE SECRETARY OF STATE TO THE CORPORATION BY ELECTRONIC TRANSMISSION.

(5) Any consent under subsection (4) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

(a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation

in accordance with the consent; and

(b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or other person responsible for the giving of notice or other communications. However, the inadvertent failure to treat the inability as a revocation does not invalidate any meeting or other action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(b) it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under [section 215(4)];

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221], those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal act.

NEW SECTION. **Section 16. Number of shareholders.** (1) For purposes of [sections 1 through 221], the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; and

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of [sections 1 though 221], shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

NEW SECTION. **Section 17. Qualified director.** (1) A qualified director is a director who, at the time action is to be taken under:

(a) [section 28(2)(f)], is not a director:

(i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply; or

(ii) who has a material relationship with any other person to whom the limitation or elimination would apply;

(b) [section 87], does not have:

(i) a material interest in the outcome of the proceeding; or

(ii) a material relationship with a person who has such an interest;

(c) [section 122 or 124]:

(i) is not a party to the proceeding;

(ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or disclaimer is challenged in the proceeding; and

(iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);

(d) [section 131] is not a director:

(i) as to whom the transaction is a director's conflicting interest transaction; or

(ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(e) [section 133] is not a director who:

(i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of another person; or

(ii) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(2) For purposes of this section:

(a) "material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(b) "material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(3) The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(a) nomination or election of the director to the current board by any director who is not a qualified

director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(b) service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director; or

(c) with respect to action to be taken under [section 87], status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

NEW SECTION. **Section 18. Householding.** (1) A corporation has delivered written notice or any other report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(a) the corporation delivers one copy of the notice, report, or statement to the common address;

(b) the corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) is considered to have consented to receiving a single copy at the common address, provided that the notice of intention explains that consent may be revoked and the method for revoking.

NEW SECTION. **Section 19. Definitions -- ratification of defective corporate actions.** In [sections 19 through 26], the following definitions apply:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action

taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization; and

(b) an overissue.

(4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure would render the corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under [section 46] at the time of the issuance; or

(b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series (including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to those shares) that were created or issued as a result of a defective corporate action and that:

(a) but for any failure of authorization would constitute valid shares; or

(b) cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with [sections 1 through 221], including as a result of ratification or validation under [sections 19 through 26].

(8) (a) "Validation effective time", with respect to any defective corporate action ratified under [sections 19 through 26], means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by [section 23] becomes effective in accordance with [section 15]; or

(ii) the time at which any articles of validation filed in accordance with [section 25] become effective.

(b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under [section 26] or otherwise unless ordered by the court.

NEW SECTION. **Section 20. Defective corporate actions.** (1) A defective corporate action is not void or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

(2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive means of ratifying or validating a defective corporate action, and the absence or failure of ratification in accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise or create a presumption that any corporate action is or was a defective corporate action or is void or voidable.

(3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued on:

(a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the authorization, designation, or creation of the shares.

NEW SECTION. **Section 21. Ratification -- defective corporate actions.** (1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

(a) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) that the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) the earlier of the date on which those persons first took action or the date on which they were purported to have been elected as the initial board of directors; and

(c) that the ratification of the election of the person or persons as the initial board of directors is approved.

(3) If any provision of [sections 1 through 221], the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party that is in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with [section 22].

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

NEW SECTION. **Section 22. Action on ratification.** (1) The quorum and voting requirements applicable to a ratifying action by the board of directors under [section 21(1)] are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(2) If the ratification of the defective corporate action requires approval by the shareholders under [section 21(3)] and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose or one of the purposes of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(a) either a copy of the action taken by the board of directors in accordance with [section 21(1)] or the information required by [section 21(1)(a) through (1)(d)]; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative

shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by [section 21(3)] must be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(4) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring ratification exceed the votes cast opposing ratification of the election at a meeting at which a quorum is present.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under [section 21(3)] (and without giving effect to any ratification of putative shares that becomes effective as a result of the vote) are neither entitled to vote nor counted for quorum purposes in a vote to approve the ratification of a defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by [section 21], approval of an amendment to the articles of incorporation under [sections 149 through 160] to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue is also required.

NEW SECTION. **Section 23. Notice requirements.** (1) Unless shareholder approval is required under [section 21(3)], prompt notice of an action taken under [section 21] must be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(a) the date of the action by the board of directors; and

(b) the date the defective corporate action was ratified, provided that notice may not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) either:

(i) a copy of the action taken by the board of directors in accordance with [section 21(1) or (2)]; or

(ii) the information required by [section 21(1)(a) through (1)(d) or (2)(a) through (2)(c)], as applicable; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative

shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under [section 21(3)] if notice is given in accordance with [section 22(2)].

(4) A notice required by this section may be given in any manner permitted by [section 15] and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

NEW SECTION. **Section 24. Effect of ratification.** From and after the validation effective time and without regard to the 120-day period during which a claim may be brought under [section 26]:

(1) each defective corporate action ratified in accordance with [section 21] may not be void or voidable as a result of the failure of authorization identified in the action taken under [section 21(1) or (2)] and is considered a valid corporate action effective as of the date of the defective corporate action;

(2) the issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under [section 21] may not be void or voidable, and such putative share or fraction of a putative share is considered an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) any corporate action taken subsequent to the defective corporate action ratified in accordance with [sections 19 through 26] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action are valid as of the time taken.

NEW SECTION. **Section 25. Filings.** (1) If the defective corporate action ratified under [sections 19 through 26] would have required under any other section of [sections 1 through 221] a filing in accordance with [sections 1 through 221], then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by [sections 1 through 221], the corporation shall file articles of validation in accordance with this section, and the articles of validation serve to amend or substitute for any other filing with respect to the defective corporate action required by [sections 1 through 221].

(2) The articles of validation must set forth:

(a) the defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization in respect of the defective corporate action;

(d) a statement that the defective corporate action was ratified in accordance with [section 21], including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

(e) the information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) if a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(b) if a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(iii) the date and time that the filing is considered to have become effective; or

(c) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under [section 21] would have required a filing under any other section of [sections 1 through 221], the articles of validation must set forth:

(i) a statement that a filing containing all of the information required to be included under the applicable

section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(ii) the date and time that the filing is considered to have become effective.

NEW SECTION. **Section 26. Judicial proceedings -- validity of corporate actions.** (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under [section 21], or any other person claiming to be substantially and adversely affected by a ratification under [section 21], the district court in the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may:

(a) determine the validity and effectiveness of any corporate action or defective corporate action;

(b) determine the validity and effectiveness of any ratification under [section 21];

(c) determine the validity of any putative shares; and

(d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations regarding matters it considers proper under the circumstances.

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days of the validation effective time.

NEW SECTION. **Section 27. Incorporators.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

NEW SECTION. **Section 28. Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 39];

(b) the number of shares the corporation is authorized to issue;

(c) the street and mailing addresses of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iv) a par value for authorized shares or classes of shares; or

(v) the imposition of interest holder liability on shareholders;

(c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law;

(e) a provision permitting or making obligatory indemnification of a director for liability as defined in [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

(i) receipt of a financial benefit to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or its shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law; and

(f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation

the right to have or participate in any or one or more classes or categories of business opportunities before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer:

(i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131]; and

(ii) may be limited by the authorizing action of the board.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 221].

(4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) As used in this section, "related person" has the meaning specified in [section 129].

NEW SECTION. **Section 29. Incorporation.** (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

NEW SECTION. **Section 30. Liability for preincorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly and severally liable for all liabilities created while so acting.

NEW SECTION. **Section 31. Organization of corporation.** (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect initial directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

NEW SECTION. **Section 32. Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(3) The bylaws may contain one or both of the following provisions:

(a) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to the procedures or conditions provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to procedures and conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record date precedes its adoption.

(4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical, and orderly process.

NEW SECTION. **Section 33. Emergency bylaws.** (1) Unless the articles of incorporation provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 34. Forum selection.** (1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be brought in that other court of this state, notwithstanding that the other court of this state is not specified in the provision, and in any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) For the purposes of this section, "internal corporate claim" means:

(a) any claim that is based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity;

(b) any derivative action or proceeding brought on behalf of the corporation;

(c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the articles of incorporation or bylaws; or

(d) any action asserting a claim governed by the internal affairs doctrine that is not included in this subsection (4).

NEW SECTION. **Section 35. Purposes.** (1) Every corporation incorporated under [sections 1 through 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other statute.

NEW SECTION. **Section 36. General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221]

within or outside this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

NEW SECTION. **Section 37. Emergency powers.** (1) In anticipation of or during an emergency as provided in subsection (4), the board of directors of a corporation may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors must be given only to those directors whom it is practicable to reach and may be given in any practicable manner; and

(b) one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 38. Lack of power to act.** (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act;

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) in a proceeding by the attorney general under [section 197].

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

NEW SECTION. **Section 39. Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of similar meaning in another language; and

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 35] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated in this state that is not administratively dissolved. If the corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law of this state;

(c) the name of a foreign corporation registered to do business in this state or an alternate name adopted by a foreign corporation registered to do business in this state because its corporate name is unavailable;

(d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name adopted by a foreign nonprofit corporation registered to do business in this state because its real name is unavailable;

(f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved. If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(g) the name of a foreign unincorporated entity registered to do business in this state or an alternate name adopted by a foreign unincorporated entity registered to do business in this state because its real name is unavailable; and

(h) any assumed business name, trademark, or service mark reserved or registered with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation or unincorporated entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability partnership is incorporated or authorized to transact business in this state and the proposed user corporation, domestic filing entity, or limited liability partnership:

(a) has merged with the other corporation, filing entity, or limited liability partnership;

(b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

(c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing entity, or limited liability partnership; or

(d) has obtained written permission from the other corporation, filing entity, or limited liability partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) [Sections 1 through 221] do not control the use of fictitious names.

NEW SECTION. **Section 40. Reserved name.** (1) A person may reserve the exclusive use of a corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

NEW SECTION. **Section 41. Registered name.** (1) A foreign corporation may register its corporate name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 39(2)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state or country and date of its incorporation, and a brief description of the nature of the business that is to be conducted in this state.

(3) The name is registered for the applicant's exclusive use on the effective date of the application and for the remainder of the calendar year unless renewed.

(4) A foreign corporation whose name registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application that complies with the requirements of subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose name registration is effective may:

(a) register to do business as a foreign corporation under the registered name if it complies with [section 39(1)(b)]; or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic

corporation is incorporated or the foreign corporation registers to do business under that name.

NEW SECTION. **Section 42. Registered office and agent -- domestic and registered foreign corporations.** (1) Each corporation shall continuously maintain in this state~~:~~

~~(a)~~ a registered office~~, which may be the same as any of its places of business~~; and

~~(b)~~ a registered agent~~, which may be:~~

~~(i) an individual who resides in this state and whose business office is identical with the registered office; or~~

~~(ii) a domestic or foreign corporation or eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is registered to do business in this state~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

(2) As used in [sections 42 through 45], "corporation" means both a domestic corporation and a registered foreign corporation.

NEW SECTION. **Section 43. Change -- registered office -- registered agent.** ~~(1)~~ A corporation may change its registered office or registered agent ~~by delivering to the secretary of state for filing a statement of change that sets forth:~~

~~(a) the name of the corporation;~~

~~(b) the street and mailing addresses of its current registered office;~~

~~(c) if the current registered office is to be changed, the street and mailing addresses of the new registered office;~~

~~(d) the name of its current registered agent;~~

~~(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and~~

~~(f) that after the change or changes are made, the street and mailing addresses of its registered office and of the business office of its registered agent will be identical.~~

~~(2) If the street or mailing address of a registered agent's business office changes, the agent shall change the street or mailing address of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and delivering to the secretary of state for filing a signed statement that complies with the requirements of subsection (1) and states~~

~~that the corporation has been notified of the change~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

NEW SECTION. **Section 44. Resignation -- registered agent.** ~~(1)~~ A registered agent may resign as agent for a corporation ~~by delivering to the secretary of state for filing a statement of resignation signed by the agent that states:~~

~~(a) the name of the corporation;~~

~~(b) the name of the agent;~~

~~(c) that the agent resigns from serving as registered agent for the corporation; and~~

~~(d) the address of the corporation to which the agent will deliver the notice required by subsection (3).~~

~~(2) A statement of resignation takes effect on the earlier of:~~

~~(a) 12:01 a.m. on the 31st day after the day on which it is filed by the secretary of state; or~~

~~(b) the designation of a new registered agent for the corporation.~~

~~(3) A registered agent shall promptly deliver to the corporation notice of the date on which a statement of resignation was delivered to the secretary of state for filing.~~

~~(4) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under [sections 1 through 221] for any matter subsequently tendered to it as agent for the corporation. The resignation does not affect any contractual rights the corporation has against the agent or that the agent has against the corporation.~~

~~(5) A registered agent may resign with respect to a corporation regardless of whether the corporation is in good standing~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

NEW SECTION. **Section 45. Service on corporation.** (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid

and correctly addressed.

(3) If process, notice, or demand cannot be served on a corporation pursuant to subsection (1) or (2) or is to be served on a registered foreign corporation that has withdrawn its registration pursuant to [section 209 or 211] or the registration of which has been terminated pursuant to [section 213], then the secretary of state is an agent of the corporation on whom process, notice, or demand may be served. Service of any process, notice, or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection at the earliest of:

(a) the date the corporation receives the process, notice, or demand;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after the process, notice, or demand is deposited in the United States mail by the secretary of state.

(4) This section does not prescribe the only means or necessarily the required means of serving a corporation.

NEW SECTION. **Section 46. Authorized shares.** (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and, before the issuance of shares of a class or series, describe the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

(a) one or more classes or series of shares that together have full voting rights; and

(b) one or more classes or series of shares, which may be the same class, classes, or series as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent otherwise provided by [sections 1 through 221];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or on the occurrence of a specified event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) at prices and in amounts specified or determined in accordance with a formula;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including distributions on the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(6) The description of the preferences, rights, and limitations of classes or series of shares in subsection (3) is not exhaustive.

NEW SECTION. **Section 47. Terms of class or series -- determination by board of directors.** (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(a) classify any unissued shares into one or more classes or into one or more series within a class;

(b) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under [section 46], of:

(a) any class of shares before the issuance of any shares of that class; or

(b) any series within a class before the issuance of any shares of that series.

(3) Before issuing any shares of a class or series created under this section, the corporation shall deliver

to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (2).

NEW SECTION. **Section 48. Issued and outstanding shares.** (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to [section 60].

(3) At all times that shares of the corporation are outstanding, one or more shares that together have full voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

NEW SECTION. **Section 49. Fractional shares.** (1) A corporation may issue fractions of a share or in lieu of doing so may:

(a) pay in cash the value of fractions of a share;

(b) issue scrip in registered or bearer form entitling the holder to receive a full share on surrendering enough scrip to equal a full share; or

(c) arrange for disposition of fractional shares by the holders of those shares.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by [section 55(2)].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition, including that:

(a) the scrip will become void if not exchanged for full shares before a specified date; and

(b) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

NEW SECTION. **Section 50. Subscription for shares -- before incorporation.** (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of cash or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation delivers a written demand for payment to the subscriber.

NEW SECTION. **Section 51. Issuance of shares.** (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders at a meeting at which a

quorum consisting of a majority, or a greater number the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists if:

(i) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and

(ii) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(b) In this subsection (6):

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares is the greater of:

(A) the voting power of the shares to be issued; or

(B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

NEW SECTION. **Section 52. Liability of shareholders.** (1) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except:

(a) to the extent provided in a provision of the articles of incorporation permitted by [section 28(2)(b)(v)]; and

(b) that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

NEW SECTION. **Section 53. Share dividends.** (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issue;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which may not be retroactive. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

NEW SECTION. **Section 54. Share rights -- options -- warrants -- awards.** (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(a) the terms and conditions upon which the rights, options, or warrants are issued; and

(b) the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue the rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(2) The terms and conditions of the rights, options, or warrants may include restrictions or conditions that:

(a) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or

(b) invalidate or void the rights, options, or warrants held by any person or transferee described in subsection (2)(a).

(3) The board of directors may authorize one or more officers to:

(a) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of rights, options, warrants, or other equity compensation awards and the terms of the rights, options, warrants, or awards to be received by the recipients, provided that an officer

may not use this authority to designate the officer or any other person the board of directors may specify as a recipient of those rights, options, warrants, or other equity compensation awards.

NEW SECTION. **Section 55. Certificates -- form -- content.** (1) Shares may be, but need not be, represented by certificates. Unless [sections 1 through 221] or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize:

(a) the preferences, rights, and limitations applicable to each class and series;

(b) any variations in preferences, rights, and limitations among the holders of the same class or series; and

(c) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed by two officers designated in the bylaws.

(5) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

NEW SECTION. **Section 56. Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by [section 55(2) and (3)] and, if applicable, [section 57].

NEW SECTION. **Section 57. Restriction on transfer of shares.** (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation or may impose restrictions on, including the alteration or elimination of, the application of [section 201]. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction described in subsection (1) is valid and enforceable against a shareholder or a transferee of the shareholder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by [section 56(2)]. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction described in subsection (1) is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law; or

(c) for any other reasonable purpose.

(4) A restriction described in subsection (1) may:

(a) obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 58. Preemptive rights -- shareholder.** (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares, except to the extent the articles of incorporation provide that right.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar effect, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A preemptive right may be waived by a shareholder. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for cash.

(d) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 59. Corporation's acquisition of its own shares.** (1) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

NEW SECTION. **Section 60. Distributions to shareholders.** (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7), the effect of a distribution under subsection (3) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(8) This section does not apply to distributions in liquidation under [sections 184 through 202].

NEW SECTION. **Section 61. Annual meeting.** (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted by [section 64], a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors must be elected.

(2) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

NEW SECTION. **Section 62. Special meeting.** (1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or of the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled

to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under [section 63 or 67], the record date for determining shareholders entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on which the demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (1)(b) have been delivered to the corporation.

(3) Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by [section 65(3)] may be conducted at a special meeting of shareholders.

NEW SECTION. **Section 63. Court-ordered meeting.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of one or more shareholders who signed a demand for a special meeting valid under [section 62] if:

(i) notice of the special meeting was not given within 30 days after the first day on which the requisite number of demands was delivered to the corporation; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the shares represented at the meeting constitute a quorum for action on

those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) For purposes of subsection (1)(a), "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 64. Action without meeting.** (1) Action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, be signed by all the shareholders entitled to vote on the action, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) The articles of incorporation may provide that any action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action to be taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to [section 78], directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(3) If not otherwise fixed under [section 67] and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under [section 67] and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent is effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

(4) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described in that manner in any document. Unless the articles of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action have been delivered to the corporation.

(5) If [sections 1 through 221] require that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(6) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(7) The notice requirements in subsections (5) and (6) may not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements does not invalidate actions taken by written consent. However, this subsection may not be considered to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time period.

NEW SECTION. **Section 65. Notice of meeting.** (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to [section 69] for holders of any class or series of shares, the notice to the holders of that class or

series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting if that date is different from the record date for determining shareholders entitled to notice of the meeting. Unless [sections 1 through 221] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(2) Unless [sections 1 through 221] or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [section 63] or [section 67], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 67], however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

NEW SECTION. **Section 66. Waiver of notice.** (1) A shareholder may waive any notice required by [sections 1 through 221] or the articles of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

NEW SECTION. **Section 67. Record date for meeting.** (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders and may not be retroactive.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(5) The record dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

NEW SECTION. **Section 68. Conduct of meeting.** (1) At each meeting of shareholders, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of that provision, by the board of directors.

(2) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

(3) Rules adopted for the meeting and the conduct of the meeting must be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted on. If no announcement is made, the polls are considered to have closed on the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes and no revocations or changes to ballots, proxies, or votes may be accepted.

NEW SECTION. **Section 69. Remote participation -- shareholder's meetings.** (1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes the participation for that class or series. Participation as a shareholder by means of remote communication is subject to guidelines and procedures the board of directors adopts and must be in conformity with subsection (2).

(2) Shareholders participating in a shareholders' meeting by means of remote communication are considered present and may vote at the meeting if the corporation has implemented reasonable measures:

(a) to verify that each person participating remotely as a shareholder is a shareholder; and

(b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

NEW SECTION. **Section 70. Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and, within each voting group, by class or series of shares and must show the address of and number of shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 216(3)], to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or

any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

NEW SECTION. **Section 71. Voting entitlements of shares.** (1) Except as provided in subsections (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(5) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

NEW SECTION. **Section 72. Proxies.** (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; and

(e) a party to a voting agreement created under [section 81].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

NEW SECTION. **Section 73. Shares held by intermediaries and nominees.** (1) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder does not have those rights or privileges.

(2) The procedure must specify:

(a) the types of intermediaries or nominees to which it applies;

(b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;

(c) the manner in which the procedure is selected, which must include that the beneficial ownership certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective;

(f) requirements for notice to the corporation with respect to the arrangement; and

(g) the form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

NEW SECTION. **Section 74. Acceptance of votes -- other instruments.** (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment

does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under [section 79], the inspector of election also may

request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

NEW SECTION. **Section 75. Quorum and voting requirements -- voting groups.** (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

(5) The election of directors is governed by [section 78].

(6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that provision.

NEW SECTION. **Section 76. Action by single and multiple voting groups.** (1) If the articles of incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that matter is taken when it is voted on by that voting group as provided in [section 75].

(2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different times.

NEW SECTION. **Section 77. Modifying quorum or voting requirements.** An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 78. Voting for directors -- cumulative voting.** (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for that right.

(3) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors" or words of similar meaning means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

NEW SECTION. **Section 79. Inspectors of election.** (1) A corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors

in the performance of the duties of inspector under subsection (2) and may rely on information provided by those and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(2) The inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting;

(c) determine the validity of proxy appointments and ballots;

(d) count the votes; and

(e) make a written report of the results.

(3) In performing their duties, the inspectors may examine:

(a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

(b) any envelope or related writing submitted with the proxy appointment forms;

(c) any ballots;

(d) any evidence or other information specified in [section 74]; and

(e) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(4) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (2) specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that the information is relevant and reliable.

(5) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under [section 92] or other judicial proceeding.

NEW SECTION. **Section 80. Voting trusts.** (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the

provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that became effective prior to [the effective date of sections 1 through 221] remains governed by the statute concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

NEW SECTION. **Section 81. Voting agreements.** (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 80].

(2) A voting agreement created under this section is specifically enforceable.

NEW SECTION. **Section 82. Shareholder agreements.** (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in [section 60];

(c) establishes who may be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section is:

(a) as set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement

is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement.

NEW SECTION. **Section 83. Definitions -- derivative proceedings.** In [sections 83 through 90] the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 90], in the right of a foreign corporation.

(2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 84. Standing.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

NEW SECTION. **Section 85. Demand.** A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made on the corporation to take suitable action; and

(2) 90 days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

NEW SECTION. **Section 86. Stay of proceedings.** If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

NEW SECTION. **Section 87. Dismissal.** (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith, after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be made by:

(a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors constitute a quorum.

(3) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either:

(a) that a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(b) that the requirements of subsection (1) have not been met.

(4) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not, the corporation has the burden of proving that the requirements of subsection (1) have been met.

(5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

NEW SECTION. **Section 88. Discontinuance -- settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class or series of shareholders, the court shall direct that notice be given to the shareholders affected.

NEW SECTION. **Section 89. Payment of expenses.** On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper if it finds that the pleading, motion, or other paper:

(a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

NEW SECTION. **Section 90. Applicability to foreign corporations.** In any derivative proceeding in the right of a foreign corporation, the matters covered by [sections 83 through 90] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

NEW SECTION. **Section 91. Shareholder action to appoint custodian or receiver.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(2) The court:

(a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held;

(b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(c) has jurisdiction over the corporation and all of its property, wherever located.

(3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(4) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(a) a custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(b) a receiver:

(i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale if authorized by the court; and

(ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation to be paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 92. Judicial determination -- corporate offices -- review of elections and shareholder votes.** (1) Upon application of or in a proceeding commenced by a person specified in subsection

(2), the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may determine:

(a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(b) the right of an individual to hold the office of director or officer of the corporation;

(c) the result or validity of any vote by the shareholders of the corporation;

(d) the right of a director to membership on a committee of the board of directors; and

(e) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the following persons:

(a) the corporation;

(b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(c) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of the person's right to the office or membership;

(d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of the person's right to the office; and

(e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

(3) In connection with any application or proceeding under subsection (1), the following must be named as defendants unless the person made the application or commenced the proceeding:

(a) the corporation;

(b) any individual whose right to office or membership on a committee of the board of directors is contested;

(c) any individual claiming the office or membership at issue; and

(d) any person claiming a right covered by subsection (1)(e) that is at issue.

(4) In connection with any application or proceeding under subsection (1), service of process may be made on each of the persons specified in subsection (3) by either:

(a) service of process on the corporation addressed to the person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(b) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(5) When service of process is made on a person other than the corporation by service on the corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly provide written notice of the service, together with copies of all process and the application or complaint, to the person at the person's last-known residence or business address or as permitted by statute of this state or by rule of the applicable court.

(6) In connection with any application or proceeding under subsection (1), the court shall dispose of the application or proceeding on an expedited basis and also may:

(a) order additional or further notice the court considers proper under the circumstances;

(b) order that additional persons be joined as parties to the proceeding if the court determines that joinder is necessary for a just adjudication of matters before the court;

(c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or otherwise;

(d) appoint a master to conduct an election or meeting;

(e) enter temporary, preliminary, or permanent injunctive relief;

(f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(g) order any other relief the court determines is equitable, just, and proper.

(7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

(8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court that existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

NEW SECTION. **Section 93. Board of directors -- requirements -- functions.** (1) Except as may be

provided in an agreement authorized under [section 82], each corporation must have a board of directors.

(2) Except as may be provided in an agreement authorized under [section 82] and subject to any limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed by or under the direction of and subject to the oversight of the board of directors.

NEW SECTION. **Section 94. Qualifications of directors.** (1) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(2) A requirement that is based on a past, prospective, or current action or expression of opinion by a nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not a permissible qualification under this section. However, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(3) A director need not be a resident of this state or a shareholder unless the articles of incorporation or bylaws prescribe those requirements.

(4) A qualification for nomination for director prescribed before a person's nomination applies to the person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to the person with respect to the nomination.

(5) A qualification for director prescribed before a director has been elected or appointed applies only at the time an individual becomes a director or during a director's term. A qualification prescribed after a director has been elected or appointed does not apply to that director before the end of that director's term.

NEW SECTION. **Section 95. Directors -- number -- election.** (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or

unless their terms are staggered under [section 98].

NEW SECTION. **Section 96. Election of directors -- certain classes or series of shares.** If the articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes of the election of directors.

NEW SECTION. **Section 97. Terms of directors generally.** (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the extent:

(a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

(b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

NEW SECTION. **Section 98. Staggered terms for directors.** The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group

expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

NEW SECTION. **Section 99. Resignation of directors.** (1) A director may resign at any time by delivering a written notice of resignation to the board of directors or its chair or to the secretary.

(2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

NEW SECTION. **Section 100. Removal of directors by shareholders.** (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number. However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

NEW SECTION. **Section 101. Removal of directors by judicial proceeding.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) considering the director's course of conduct and the inadequacy of other available remedies, removal or other relief would be in the best interests of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

NEW SECTION. **Section 102. Vacancy -- board of directors.** (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

NEW SECTION. **Section 103. Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

NEW SECTION. **Section 104. Meetings.** (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this

means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

NEW SECTION. **Section 105. Action without meeting.** (1) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described in that manner in any document.

NEW SECTION. **Section 106. Notice of meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

NEW SECTION. **Section 107. Waiver of notice.** (1) A director may waive any notice required by [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of

the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

NEW SECTION. **Section 108. Quorum and voting.** (1) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in [sections 1 through 221].

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or transacting business at the meeting;

(b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

NEW SECTION. **Section 109. Committees of board.** (1) Unless [sections 1 through 221], the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

(3) [Sections 104 through 108] apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under [section 93] to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by shareholders;

(c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;

(d) adopt, amend, or repeal bylaws;

(e) approve a plan of merger, including plans not requiring shareholder approval;

(f) authorize or approve reacquisition of shares except according to a formula or method prescribed by the board of directors; or

(g) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

NEW SECTION. **Section 110. Submission of matters for shareholder vote.** A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

NEW SECTION. **Section 111. Standards of conduct for directors.** (1) Each member of the board of directors, when discharging the duties of a director, shall act:

(a) in good faith; and

(b) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a board committee, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a ~~similar~~ LIKE position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(4) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a) or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(5) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) A director is entitled to rely, in accordance with subsection (4) or (5), on:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

NEW SECTION. **Section 112. Standards of liability for directors.** (1) A director may not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(a) no defense interposed by the director precludes liability based on:

(i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];

(ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section 132]; or

(iii) the protection afforded by [section 133]; and

(b) the challenged conduct consisted or was the result of:

(i) action not in good faith; or

(ii) a decision:

(A) that the director did not reasonably believe to be in the best interests of the corporation; or

(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct and:

(A) the relationship, domination, or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) after a reasonable expectation of an effect on the director's judgment has been established, the director may not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for an inquiry; or

(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(2) The party seeking to hold the director liable:

(a) for money damages also has the burden of establishing that:

(i) harm to the corporation or its shareholders has been suffered; and

(ii) the harm suffered was proximately caused by the director's challenged conduct; or

(b) for other money payment under a legal remedy, such as compensation for the unauthorized use of

corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) Nothing in this section:

(a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional interest under [section 130];

(c) affects any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States; or

(d) invalidates or otherwise limits the business judgment rule under the common law.

NEW SECTION. **Section 113. Director's liability for unlawful distributions.** (1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes that when taking the action the director did not comply with [section 111].

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

(a) contribution from every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

(3) A proceeding to enforce:

(a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after the date:

(i) on which the effect of the distribution was measured under [section 60(5) or (7)];

(ii) as of which the violation of [section 60(1)] occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) on which the distribution of assets to shareholders under [section 192(1)] was made; or

(b) contribution or recoupment under subsection (2) is barred unless it is commenced within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

NEW SECTION. **Section 114. Officers.** (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to an officer responsibility for maintaining and authenticating the records of the corporation required to be kept under [section 215(1)].

(4) The same individual may simultaneously hold more than one office in a corporation.

NEW SECTION. **Section 115. Functions of officers.** Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

NEW SECTION. **Section 116. Standards of conduct for officers.** (1) An officer, when performing in an official capacity, has the duty to act:

(a) in good faith;

(b) with the care that a person in a ~~similar~~ LIKE position would reasonably exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation:

(a) to inform the superior officer to whom or the board of directors or the board committee to which the officer reports of information about the affairs of the corporation known to the officer within the scope of the officer's functions and known to the officer to be material to the superior officer, board, or committee; and

(b) to inform the officer's superior officer, another appropriate person within the corporation, or the board

of directors, or a board committee of any actual or probable material violation of law involving the corporation or any material breach of duty to the corporation by an officer, employee, or agent of the corporation that the officer believes has occurred or is likely to occur.

(3) In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(a) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence.

(4) An officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability will depend in each instance on applicable law, including those principles of [section 112] that have relevance.

NEW SECTION. **Section 117. Resignation and removal of officers.** (1) An officer may resign at any time by delivering a written notice to the corporation. A resignation is effective as provided in [section 15(9)] unless the notice provides for delayed effectiveness, including effectiveness determined on a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

(2) An officer may be removed at any time with or without cause by:

(a) the board of directors;

(b) the appointing officer unless the bylaws or the board of directors provides otherwise; or

(c) any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who

appointed the officer resigning or being removed.

NEW SECTION. **Section 118. Contract rights of officers.** (1) The election or appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

NEW SECTION. **Section 119. Definitions -- indemnification and advance for expenses.** For the purposes of [sections 119 through 128], unless the context clearly requires otherwise, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or who, while a director of the corporation, is or was serving at the corporation's request as a director of another entity or trustee of an employee benefit plan. A director is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of a director.

(3) "Liability" means the obligation to pay a judgment, a settlement, a penalty, a fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding, including attorney fees.

(4) "Officer" means an individual who is or was an officer of a corporation or who, while an officer of the corporation, is or was serving at the corporation's request as an officer of another entity or trustee of an employee benefit plan. An officer is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of an officer.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an officer as contemplated in [section 125], the office in a corporation held

by the officer.

(b) The term does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan, or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

NEW SECTION. **Section 120. Permissible indemnification.** (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(a) (i) the director acted in good faith; and

(ii) the director reasonably believed:

(A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(B) in all other cases, that the conduct was at least not opposed to the best interests of the corporation; and

(iii) in the case of a criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful; or

(b) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by [section 28(2)(e)].

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the ~~best~~ interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under [section 123(1)(c)], a corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under

subsection (1); or

(b) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

NEW SECTION. **Section 121. Mandatory indemnification.** A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against expenses incurred by the director in connection with the proceeding.

NEW SECTION. **Section 122. Advance for expenses.** (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a director if the director delivers to the corporation a signed, written undertaking of the director to repay any funds advanced if:

(a) the director is not entitled to mandatory indemnification under [section 121]; and

(b) it is ultimately determined under [section 123] or [section 124] that the director is not entitled to indemnification.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section must be made:

(a) by the board of directors in the following manner:

(i) if there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or

(ii) by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of all the qualified directors; or

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (3)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

NEW SECTION. **Section 123. Court-ordered indemnification and advance for expenses.** (1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable~~:~~

~~(i)~~ to indemnify the director~~;~~ or

~~(ii)~~ to advance expenses to the director even if, IN EITHER CASE, the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c), it may also order the corporation to pay the director's expenses incurred to obtain court-ordered indemnification or advance for expenses.

NEW SECTION. **Section 124. Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under [section 120] unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in [section 120].

(2) The determination must be made:

(a) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of all the qualified directors;

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (2)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(3) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection (2)(b)(ii).

NEW SECTION. **Section 125. Indemnification of officers.** (1) A corporation may indemnify and advance expenses under [sections 119 through 128] to an officer who is a party to a proceeding because the person is an officer:

(a) to the same extent as a director; and

(b) if the person is an officer but not a director, to any further extent provided by the articles of incorporation or the bylaws or by a resolution adopted or a contract approved by the board of directors or shareholders, except for:

(i) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) liability arising out of conduct that constitutes:

(A) receipt by the officer of a financial benefit to which the officer is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders; or

(C) an intentional violation of criminal law.

(2) Subsection (1)(b) applies to an officer who is also a director if the officer is made a party to the proceeding based on an act or omission solely as an officer.

(3) An officer who is not a director is entitled to mandatory indemnification under [section 121] and may

apply to a court under [section 123] for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections.

NEW SECTION. **Section 126. Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation or a joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under [sections 119 through 128].

NEW SECTION. **Section 127. Variation by corporate action -- application.** (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with [section 120] or advance funds to pay for or reimburse expenses in accordance with [section 122]. An obligatory provision under this section satisfies the requirements for authorization referred to in [section 122(3)] and [section 124(3)]. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with [section 122] to the fullest extent permitted by law unless the provision expressly provides otherwise.

(2) A right of indemnification or to advances for expenses created by [sections 119 through 128] or under subsection (1) of this section and in effect at the time of an act or omission may not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders adopted after the occurrence of the act or omission unless, in the case of a right created under subsection (1), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision pursuant to subsection (1) may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise expressly provided. A provision for indemnification or advance for expenses in the articles of incorporation or bylaws or a resolution of the board of directors or shareholders of a predecessor of the

corporation in a merger or in a contract to which the predecessor is a party that exists at the time the merger takes effect is governed by [section 167(1)(d)].

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to [sections 119 through 128].

(5) [Sections 119 through 128] do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when the director or officer is not a party.

(6) [Sections 119 through 128] do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

NEW SECTION. **Section 128. Exclusivity.** A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by [sections 119 through 128].

NEW SECTION. **Section 129. Definitions -- director's conflicting interest transactions.** For the purposes of [sections 129 through 132], unless otherwise specified, the following definitions apply:

(1) "Control" or "controlled by" means:

(a) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(b) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(a) to which, at the relevant time, the director is a party;

(b) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(c) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of [section 130(2)(c)], that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(a) fair in terms of the director's dealings with the corporation; and

(b) comparable to what might have been obtainable in an arm's-length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(a) an individual's spouse;

(b) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of an individual or of an individual's spouse;

(c) a natural person living in the same home as an individual;

(d) an entity, other than the corporation or an entity controlled by the corporation, controlled by an individual or any person specified in subsections (5)(a) through (5)(c);

(e) a domestic or foreign:

(A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which an individual is a director;

(B) unincorporated entity of which an individual is a general partner or a member of the governing body; or

(C) individual, trust, or estate for whom or of which an individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) a person that is or an entity that is controlled by an employer of an individual.

(6) "Relevant time" means:

(a) the time at which directors' action respecting the transaction is taken in compliance with [section 131]; or

(b) if the transaction is not brought before the board of directors or a committee for action under [section 131], the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(a) the existence and nature of the director's conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that a director free of

that conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

NEW SECTION. **Section 130. Judicial action.** (1) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(2) A director's conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the grounds that the director has an interest respecting the transaction if:

(a) directors' action respecting the transaction was taken in compliance with [section 131] at any time;

(b) shareholders' action respecting the transaction was taken in compliance with [section 132] at any time; or

(c) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

NEW SECTION. **Section 131. Directors' action.** (1) Directors' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(a)] if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by the qualified directors or after modified disclosure in compliance with subsection (2), provided that:

(a) the qualified directors have deliberated and voted outside the presence of and without participation by any other director; and

(b) if the action has been taken by a board committee, all members of the committee were qualified directors and either:

(i) the committee was composed of all the qualified directors on the board of directors; or

(ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(2) Notwithstanding subsection (1), when a transaction is a director's conflicting interest transaction only because a related person of the director is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(a) all information required to be disclosed that is not violative of the duty, obligation, or rule;

(b) the existence and nature of the director's conflicting interest; and

(c) the nature of the conflicted director's duty not to disclose the confidential information.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the board committee constitutes a quorum for purposes of action that complies with this section.

(4) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a board committee, in which directors who are not qualified directors may participate.

NEW SECTION. **Section 132. Shareholders' action.** (1) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(b)] if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(a) notice to shareholders describing the action to be taken respecting the transaction;

(b) provision to the corporation of the information referred to in subsection (2); and

(c) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote must be determined as of the record date for notice of the meeting.

(2) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (3), and of the identity of the holders of those shares.

(3) For purposes of this section:

(a) "holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder,

and an unrestricted voting trust beneficial owner; and

(b) "qualified shares" means all shares entitled to be voted with respect to the transaction except shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows or under subsection (2) is informed are held by:

(i) a director who has a conflicting interest respecting the transaction; or

(ii) a related person of the director, excluding a person described in [section 129(5)(f)].

(4) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (5), shareholders' action that otherwise complies with this section is not affected by the presence of holders of or by the voting of shares that are not qualified shares.

(5) If a shareholders' vote does not comply with subsection (1) solely because of a director's failure to comply with subsection (2) and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take any action respecting the transaction and the director, and may give any effect to the shareholders' vote, that the court considers appropriate in the circumstances.

(6) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which shares that are not qualified shares may participate.

NEW SECTION. **Section 133. Business opportunities.** (1) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(a) before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 131]; or

(ii) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance

with the procedures set forth in [section 132], in either case as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in [section 129], the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(b) the duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and, if required, made effective by action of qualified directors in accordance with [section 28(2)(f)].

(2) In any proceeding seeking equitable relief or other remedies based on an alleged improper pursuit or taking advantage of a business opportunity by a director or officer directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (1)(a)(ii) before pursuing or taking advantage of the opportunity does not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

NEW SECTION. **Section 134. Definitions -- domestication -- conversion.** As used in [sections 134 through 148] the following definitions apply:

(1) "Conversion" means a transaction pursuant to [sections 143 through 148].

(2) "Converted entity" means the converting entity as it continues in existence after a conversion.

(3) "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion pursuant to [section 145] or the foreign eligible entity that approves a conversion pursuant to the organic law of the eligible entity.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to [section 139] or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(6) "Domestication" means a transaction pursuant to [sections 138 through 142].

(7) "Protected agreement" means:

(a) a document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before the enactment date;

(b) an agreement that is binding on a domestic corporation or eligible entity immediately before the enactment date;

(c) the articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before the enactment date; or

(d) an agreement that is binding on any of the shareholders, members, interest holders, directors, or other governors of a domestic corporation or eligible entity, in their official capacities, immediately before the enactment date. For purposes of [sections 138 and 143] and this subsection (7), "enactment date" means the earliest date on which the laws of this state authorized a transaction having the effect of a domestication or a conversion, as applicable.

NEW SECTION. **Section 135. Excluded transactions.** (1) [Sections 134 through 148] may not be used to effect a transaction that:

(a) converts or domesticates a company organized on the mutual principle to one organized on the basis of share ownership;

(b) converts or domesticates banks and trust companies regulated under Title 32, chapter 1;

(c) converts or domesticates building and loan associations regulated under Title 32, chapter 2;

(d) converts or domesticates credit unions regulated under Title 32, chapter 3; or

(e) converts or domesticates insurance companies regulated under Title 33.

(2) The conversion of a domestic corporation to a domestic benefit corporation is governed by Title 35, chapter 1, part 14, and not by [sections 134 through 148].

NEW SECTION. **Section 136. Required approvals.** If a domestic or foreign corporation or eligible entity may not be a party to a merger without the approval of the attorney general, the state auditor, the department of administration, or the public service commission and the applicable statutes or regulations do not specifically deal with transactions under [sections 134 through 148] but do require approval by one of those agencies or officials for mergers, a corporation or eligible entity may not be a party to a transaction under [sections 134 through 148] without the prior approval of that agency or official.

NEW SECTION. **Section 137. Relationship to other laws.** A transaction effected under [sections 134 through 148] does not create or impair a right, duty, or obligation of a person under the laws of this state other

than [sections 134 through 148] relating to a change in control, business combination, control-share acquisition, or a similar transaction involving a domesticating or converting domestic corporation unless the approval of the plan of domestication or conversion is by a vote of the shareholders or the board of directors that would be sufficient to create or impair the right, duty, or obligation directly under that law.

NEW SECTION. **Section 138. Domestication.** (1) By complying with the provisions of [sections 138 through 142] applicable to foreign corporations, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of [sections 138 through 142], a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) The plan of domestication must include:

(a) the name of the domesticating corporation;

(b) the name and jurisdiction of formation of the domesticated corporation;

(c) the manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination;

(d) the proposed articles of incorporation and bylaws of the domesticated corporation; and

(e) the other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) If a protected agreement of a domestic domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 139. Action on plan of domestication.** In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication must be adopted in the following manner:

(1) The plan of domestication must first be adopted by the board of directors.

(2) (a) The plan of domestication must then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of domestication by the shareholders or for the effectiveness of the plan of domestication.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of domestication requires the approval of a majority of the votes entitled to be cast on the plan and, except as provided in subsection (6), the approval of a majority of the votes entitled to be cast on the plan by any class or series of shares entitled to vote as a separate group on the plan. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights in subsection (5) of any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under [section 152] if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation

would become subject to interest holder liability, approval of the plan of domestication must require the signing in connection with the domestication, by each affected shareholder, of a separate written consent to become subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce that interest holder liability.

NEW SECTION. **Section 140. Articles of domestication -- effectiveness.** (1) After:

(a) a plan of domestication of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a foreign corporation that is a domesticating corporation has approved a domestication as required under its organic law, articles of domestication must be signed by the domesticating corporation. The articles must set forth:

(i) the name of the domesticating corporation and its jurisdiction of formation;

(ii) the name of the domesticated corporation and its jurisdiction of formation; and

(iii) if the domesticating corporation is:

(A) a domestic corporation, a statement that the plan of domestication was approved in accordance with [sections 134 through 148]; or

(B) a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(2) If the domesticated corporation is a domestic corporation, the articles of domestication must have attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28]. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(3) The articles of domestication must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the domestication becomes effective on the later of:

(a) the date and time provided by the organic law of the domesticated corporation; or

(b) the date the articles of domestication are effective.

(5) If the domesticating corporation is a foreign corporation that is registered to do business in this state under [sections 203 through 214], its registration statement is canceled automatically when the domestication becomes effective.

NEW SECTION. **Section 141. Amendment of plan of domestication -- abandonment.** (1) A plan of domestication of a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination to be received by any of the shareholders of the domesticating corporation under the plan;

(ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective except changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in the plan; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the secretary of state for filing but before the articles of domestication have become effective, articles of abandonment signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the domesticating corporation;

(b) the date on which the articles of domestication were filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

NEW SECTION. **Section 142. Effect of domestication.** (1) When a domestication becomes effective:

(a) all property owned by and every contract right possessed by the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and liabilities of the domesticated corporation;

(c) the name of the domesticated corporation may be but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) the articles of incorporation and bylaws of the domesticated corporation become effective;

(e) the shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) the domesticated corporation is:

(i) incorporated under and subject to the organic law of the domesticated corporation;

(ii) the same corporation without interruption as the domesticating corporation; and

(iii) considered to have been incorporated on the date the domesticating corporation was originally incorporated.

(2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability with respect to the domesticating corporation before the domestication becomes

effective is as follows:

(a) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(b) The provisions of the organic law of the domesticating corporation continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(4) A shareholder who becomes subject to interest holder liability with respect to the domesticated corporation as a result of the domestication has that interest holder liability only with respect to interest holder liabilities that arise after the domestication becomes effective.

(5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

NEW SECTION. **Section 143. Conversion.** (1) By complying with [sections 143 through 148], a domestic corporation may become:

(a) a domestic eligible entity; or

(b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

(2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic

eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through 148]. For purposes of applying [sections 143 through 148]:

(a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a business corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting corporation in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 144. Plan of conversion.** (1) A domestic corporation may convert to a domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan of conversion must include:

(a) the name of the converting corporation;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination;

(d) the other terms and conditions of the conversion; and

(e) the full text that will be in effect immediately after the conversion becomes effective of the organic rules of the converted entity, which must be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

NEW SECTION. **Section 145. Action on plan of conversion.** In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors.

(2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or for the effectiveness of the plan of conversion.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in writing as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the

plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the interest holder liability.

NEW SECTION. **Section 146. Articles of conversion -- effectiveness.** (1) After:

(a) a plan of conversion of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, articles of conversion must be signed by the converting entity and must:

(i) state the name, jurisdiction of formation, and type of entity of the converting entity;

(ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

(iii) if the converting entity is:

(A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections 143 through 148]; or

(B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with its organic law; or

(II) a domestic eligible entity the organic law of which does not provide for approval of the conversion, state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through 148]; and

(iv) if the converted entity is:

(A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached the public organic record of the converted entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

(B) a domestic limited liability partnership, have attached the filing required to become a limited liability partnership.

(2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of [section 28], except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that the public organic record does not need to be signed.

(3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the conversion itself becomes effective on the later of:

(a) the date and time provided by the organic law of that eligible entity; or

(b) the date the articles of conversion become effective.

(5) Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing satisfies the requirements of both the other organic law and this section.

(6) If the converting entity is a foreign eligible entity that is registered to do business in this state under a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign qualification is canceled automatically on the effective date of its conversion.

NEW SECTION. **Section 147. Amendment of plan of conversion -- abandonment.** (1) A plan of conversion of a converting entity that is a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination to be received by any of the shareholders of the converting corporation under the plan;

(ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes effective except changes that do not require approval of the eligible interest holders of the converted entity under

its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in any material respect.

(2) After a plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by [sections 143 through 148] and before the articles of conversion become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of state for filing and before the articles of conversion become effective, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the converting entity;

(b) the date on which the articles of conversion were filed by the secretary of state; and

(c) a statement that the conversion has been abandoned in accordance with this section.

NEW SECTION. **Section 148. Effect of conversion.** (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting entity remain the property and contract rights of the converted entity without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and other liabilities of the converted entity;

(c) the name of the converted entity may be but need not be substituted for the name of the converting entity in any pending action or proceeding;

(d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) if the converted entity is a nonfiling entity, its private organic rules become effective;

(f) if the converted entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests

or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity; and

(h) the converted entity is:

(i) incorporated or organized under and subject to the organic law of the converted entity;

(ii) the same entity without interruption as the converting entity; and

(iii) considered to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability with respect to that converting eligible entity before the conversion becomes effective is as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(c) The eligible interest holder has the rights of contribution from other persons that are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as

if the conversion had not occurred.

(d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

(5) A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after the conversion inures to the converted entity.

(8) A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

NEW SECTION. **Section 149. Authority to amend.** (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

NEW SECTION. **Section 150. Amendment before issuance of shares.** If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

NEW SECTION. **Section 151. Amendment by board of directors and shareholders.** If a corporation has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

(1) The proposed amendment must first be adopted by the board of directors.

(2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or for the effectiveness of the amendment.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability, the terms and conditions of the new interest holder liability:

(a) are substantially identical to those of the existing interest holder liability; or

(b) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce that interest holder liability.

(7) For purposes of [section 157] and subsection (6) of this section, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if:

(a) the person did not have interest holder liability before the amendment becomes effective; or

(b) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

NEW SECTION. **Section 152. Voting on amendments by voting groups.** (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment would:

(a) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(c) change the rights, preferences, or limitations of all or part of the shares of the class;

(d) change the shares of all or part of the class into a different number of shares of the same class;

(e) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(g) limit or deny an existing preemptive right of all or part of the shares of the class; or

(h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a

single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to [section 151(3)].

(4) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

NEW SECTION. **Section 153. Amendment by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) if the corporation has only one class of shares outstanding:

(a) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) to delete a class of shares from the articles of incorporation as a result of the operation of [section 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder approval.

NEW SECTION. **Section 154. Articles of amendment.** (1) After an amendment to the articles of incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

(a) the name of the corporation;

(b) the text of each amendment adopted or the information required by [section 3(11)(e)];

(c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section 3(11)(e)];

(d) the date of each amendment's adoption; and

(e) if an amendment:

(i) was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval was not required;

(ii) required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

(iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

(2) Articles of amendment take effect on the effective date determined in accordance with [section 6].

NEW SECTION. **Section 155. Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(2) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in [section 151].

(3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) a statement that the restated articles consolidate all amendments into a single document; and

(d) if a new amendment is included in the restated articles, the statements required under [section 154] with respect to the new amendment.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(5) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the statements required by subsection (3)(d).

NEW SECTION. **Section 156. Amendment pursuant to reorganization.** (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

NEW SECTION. **Section 157. Effect of amendment.** (1) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability with respect to the corporation as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect to interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder

liability of a shareholder who had interest holder liability with respect to the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the articles of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

NEW SECTION. **Section 158. Authority to amend.** (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power exclusively to the shareholders in whole or part; or

(b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(3) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

NEW SECTION. **Section 159. Bylaw increasing quorum or voting requirement for directors.** (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise; or

(b) if adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the

shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 160. Bylaw provisions relating to election of directors.** (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the votes;

(b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the date that is the earlier of:

(i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

(ii) the date on which an individual is selected by the board of directors to fill the office held by the director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

(iii) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by

shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise;

(b) if adopted by the board of directors, by the board of directors or the shareholders.

NEW SECTION. **Section 161. Definitions -- mergers and share exchanges.** As used in [sections 161 through 168], the following definitions apply:

(1) "Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

(3) "New interest holder liability" means interest holder liability of a person resulting from a merger or share exchange that is:

(a) with respect to an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or

(b) with respect to the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:

(i) the person did not have interest holder liability immediately before the merger or share exchange became effective; or

(ii) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(5) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one or more other corporations or eligible entities are merged.

NEW SECTION. **Section 162. Merger.** (1) By complying with [sections 161 through 168]:

(a) one or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

(b) two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

(2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity, and the merger may then be effected as provided in the other provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

(a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of merger must include:

(a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

(b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property, or any combination;

(e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record; and

(f) any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic rules of the party.

(5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(7) A plan of merger may be amended only with the consent of each party to the merger except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger;

(ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic or foreign nonprofit corporation, or unincorporated entity; or

(iii) any other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 163. Share exchange.** (1) By complying with [sections 161 through 168]:

(a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange; or

(b) all of the shares of one or more classes or series of shares of a domestic corporation may be

acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange.

(2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that corporation or other entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes of applying [sections 161 through 168]:

(a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of share exchange must include:

(a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests;

(b) the terms and conditions of the share exchange;

(c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; and

(d) any other provisions required by the organic law governing the acquired entity or its articles of incorporation or organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable

outside the plan in accordance with [section 3(11)].

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired entity; or

(ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 164. Action on plan of merger or share exchange.** In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be adopted in the following manner:

(1) The plan of merger or share exchange must first be adopted by the board of directors.

(2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their shares to the offeror in response to the offer unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or for the effectiveness of the plan of merger or share exchange.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or eligible entity.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) Subject to subsection (7), separate voting by voting groups is required:

(a) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; or

(ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under [section 152];

(b) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share exchange:

(a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

(b) will not effect a substantive business combination.

(8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) the corporation will survive the merger;

(b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

(c) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the effective date of the merger; and

(d) the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under [section 51(6)].

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domestic corporation:

(a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and

(b) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

(10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of merger or share exchange is not required if:

(a) the plan of merger or share exchange expressly:

(i) permits or requires the merger or share exchange to be effected under this subsection (10); and

(ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f);

(b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

(c) the offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subsection (10)(h);

(d) the offer remains open for at least 10 days;

(e) the offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) the following shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168] and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) shares purchased by the offeror in accordance with the offer;

(ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of them; and

(iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible interests in the offeror, parent, or subsidiary;

(g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to

be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration described in this subsection (10)(h).

(11) As used in subsection (10):

(a) "offer" means the offer referred to in subsection (10)(b);

(b) "offeror" means the person making the offer;

(c) "parent" of an entity means a person that owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(d) shares tendered in response to the offer are considered to have been "purchased" in accordance with the offer at the earliest time that:

(i) the offeror has irrevocably accepted those shares for payment; and

(ii) either:

(A) in the case of shares represented by certificates, the offeror or the offeror's designated depository or other agent has physically received the certificates representing those shares; or

(B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "wholly owned subsidiary" of a person means an entity of which or in which that person owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(12) Unless the articles of incorporation provide otherwise:

(a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

NEW SECTION. **Section 165. Merger between parent and subsidiary or between subsidiaries.** (1) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

(a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power

of each class and series of the outstanding shares or eligible interests that have voting power; or

(b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary.

(2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary's shareholders that the merger has become effective. The notice must include:

(a) a copy of the plan of merger; or

(b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be furnished, upon request and at no cost, to any shareholder of any party to the merger.

(3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers generally.

NEW SECTION. **Section 166. Articles of merger or share exchange.** (1) After a plan of merger has been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)]. The articles must set forth:

(a) the name, jurisdiction of formation, and type of entity of each party to the merger;

(b) the name, jurisdiction of formation, and type of entity of the survivor;

(c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended or if a new domestic corporation is created as a result of the merger:

(i) the amendments to the survivor's articles of incorporation; or

(ii) the articles of incorporation of the new corporation;

(d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or if a new domestic eligible entity is created as a result of the merger:

(i) the amendments to the public organic record of the survivor; or

(ii) the public organic record of the new eligible entity;

(e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and the articles of incorporation;

(f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) as to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized as required by its organic law;

(h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or [section 162(3)]; and

(i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required to become a limited liability partnership, as an attachment.

(2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be signed by the acquired entity and the acquiring entity. The articles must set forth:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible entity that is the acquiring entity; and

(c) a statement that the plan of share exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of shares or eligible interests included in the exchange; and

(ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section 163(3)].

(3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5), the merger or share exchange takes effect on the effective date determined in accordance with [section 6].

(5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created by the merger is the survivor, the merger itself becomes effective on the later of:

(a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become effective; or

(b) the date the articles of merger take effect.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both that organic law and this section.

NEW SECTION. **Section 167. Effect of merger or share exchange.** (1) When a merger becomes effective:

(a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases;

(c) all property owned by and every contract right possessed by each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

(e) the name of the survivor may be but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger;

(g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective;

(h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are converted, and the former holders

of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign corporation;

(i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor; and

(j) if the survivor exists before the merger:

(i) all the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

(ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

(iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under the organic law governing the acquired entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability with respect to an entity as a result of a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of the party or acquired entity:

(i) that were exchanged in the merger or share exchange;

(ii) that were cancelled in the merger; or

(iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, the following provisions apply:

(A) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(B) The provisions of the organic law governing any entity for which the person had that prior interest holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(C) The person has the rights of contribution from other persons that are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(D) The person may not by reason of that prior interest holder liability have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on that interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of the merger is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under [sections 171 through 183].

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the laws of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred

except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

NEW SECTION. **Section 168. Abandonment of merger or share exchange.** (1) After a plan of merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business corporation that is a party to the plan without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment signed by all the parties that signed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

(c) a statement that the merger or share exchange has been abandoned in accordance with this section.

NEW SECTION. **Section 169. Disposition of assets not requiring shareholder approval.** No approval of the shareholders is required, unless the articles of incorporation provide otherwise:

(1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or

otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course of business;

(3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

NEW SECTION. **Section 170. Shareholder approval of certain dispositions.** (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation is conclusively held to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least:

(a) 25% of total assets at the end of the most recently completed fiscal year; and

(b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing operations, in each case for the most recently completed fiscal year.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval by the shareholders of a disposition or for the effectiveness of the disposition.

(4) If a disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must

state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this section.

NEW SECTION. **Section 171. Definitions -- appraisal rights.** For the purposes of [sections 171 through 183], the following definitions apply:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive of another person. For purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

(2) "Beneficial owner" means any person who directly, or indirectly through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares. However, a member of a national securities exchange is not considered a beneficial owner of securities held directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed is held to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation that are

beneficially owned by any member of the group.

(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

(4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(5) "Fair value" means the value of the corporation's shares determined:

(a) immediately before the effectiveness of the corporate action to which the shareholder objects;

(b) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to [section 172(1)(d)].

(6) "Interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) "Interested person" means a person or an affiliate of a person who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

(a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(c) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders, other than:

(i) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section 131]; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director or

governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

(8) "Interested transaction" means a corporate action described in [section 172(1)], other than a merger pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

NEW SECTION. **Section 172. Right to appraisal.** (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 164] or would be required but for the provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) the corporation is a subsidiary and the merger is governed by [section 165];

(b) consummation of a share exchange to which the corporation is a party the shares of which will be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series if:

(i) under the terms of the corporate action approved by the shareholders, the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are to be distributed to shareholders in cash:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of distribution; and

(ii) the disposition of assets is not an interested transaction;

(d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share created;

(e) any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of the board of directors;

(f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication;

(g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143]; or

(h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 143].

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;

(ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more than 10% of those shares; or

(iii) issued by an open-end management investment company registered with the United States securities and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) must be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant

to [section 164(10)], the date of the offer; or

(ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for the holders of any class or series of shares:

(i) who are required by the terms of the corporate action requiring appraisal rights to accept for those shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the corporate action becomes effective; or

(ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189 and 190]:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of the distribution.

(d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) no limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143] or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

(b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within 1 year after the effective date of the amendment if the action would

otherwise afford appraisal rights.

NEW SECTION. **Section 173. Assertion of rights -- nominees -- beneficial shareholders.** (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(a) submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in [section 176(2)(b)(ii)]; and

(b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

NEW SECTION. **Section 174. Notice of appraisal rights.** (1) When any corporate action specified in [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in [section 176].

(3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the

shareholders pursuant to [section 64]:

(a) written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of [sections 171 through 183]; and

(b) written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of [sections 171 through 183].

(4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (2) must be accompanied by:

(a) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of the notice, an income statement for that year, and a cash flow statement for that year, provided that if those financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) the latest interim financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action.

NEW SECTION. **Section 175. Notice of intent to demand payment -- consequences of voting or consenting.** (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the proposed action.

(2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor

of the proposed action with respect to that class or series of shares.

(3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not tender or cause or permit to be tendered any shares of that class or series in response to the offer.

(4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 176. Appraisal notice and form.** (1) If a corporate action requiring appraisal rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2), or (3)]. In the case of a merger under [section 165], the parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be delivered no earlier than the date the corporate action specified in [section 172(1)] became effective and no later than 10 days after that date and must:

(a) supply a form that:

(i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action; and

(ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;

(b) state:

(i) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which may not be earlier than the date by which the corporation must receive the required form under subsection (2)(b)(ii);

(ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than

60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under [section 177] must be received, which must be within 20 days after the date specified in subsection (2)(b)(ii) of this section; and

(c) be accompanied by a copy of [sections 171 through 183].

NEW SECTION. **Section 177. Perfection of rights -- right to withdraw.** (1) A shareholder who receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)]. In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to [section 176(2)(b)(v). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in [section 176(2)], is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 178. Payment.** (1) Except as provided in [section 179], within 30 days after

the form required by [section 176(2)(b)(ii)] is due, the corporation shall pay in cash to those shareholders who complied with [section 177(1)] the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) must be accompanied by:

(a) (i) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year or, if those annual financial statements are not reasonably available, reasonably equivalent financial information; and

(ii) the latest interim financial statements of the corporation, if any;

(b) a statement of the corporation's estimate of the fair value of the shares, which must equal or exceed the corporation's estimate given pursuant to [section 176(2)(b)(iii)]; and

(c) a statement that shareholders described in subsection (1) of this section have the right to demand further payment under [section 180] and that if any shareholder does not do so within the time period specified in [section 180(2)], the shareholder is considered to have accepted the payment under subsection (1) of this section in full satisfaction of the corporation's obligations under [sections 171 through 183].

NEW SECTION. **Section 179. After-acquired shares.** (1) A corporation may elect to withhold payment required by [section 178] from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to [section 176(2)(a)].

(2) If the corporation elected to withhold payment under subsection (1) of this section, it shall, within 30 days after the form required by [section 176(2)(b)(ii)] is due, notify all shareholders who are described in subsection (1) of this section:

(a) of the information required by [section 178(2)(a)];

(b) of the corporation's estimate of fair value pursuant to [section 178(2)(b)];

(c) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under [section 180];

(d) that those shareholders who wish to accept the offer shall notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(e) that those shareholders who do not satisfy the requirements for demanding appraisal under [section

180] are considered to have accepted the corporation's offer.

(3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in subsection (2)(e).

NEW SECTION. **Section 180. Procedure if shareholder dissatisfied with payment or offer.** (1) A shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179] who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

NEW SECTION. **Section 181. Judicial appraisal of shares -- court action.** (1) If a shareholder makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180], plus interest.

(2) The corporation shall commence the proceeding in the district court of the county in which its principal office is located or, if its principal office is not located in this state, in the first judicial district.

(3) The corporation shall make all shareholders, regardless of whether they are residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties

must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for the shares, plus interest; or

(b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under [section 179].

NEW SECTION. **Section 182. Court costs -- expenses.** (1) The court in an appraisal proceeding commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(2) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

(b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180], any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit.

NEW SECTION. **Section 183. Other remedies limited.** (1) The legality of a proposed or completed corporate action described in [section 172(1)] may not be contested, and the corporate action may not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) does not apply to a corporate action that:

(a) was not authorized and approved in accordance with the applicable provisions of:

(i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169 and 170];

(ii) the articles of incorporation or bylaws; or

(iii) the resolution of the board of directors authorizing the corporate action;

(b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) is an interested transaction unless it has been recommended by the board of directors in the manner provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as if the interested transaction were a director's conflicting interest transaction; or

(d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

NEW SECTION. **Section 184. Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(i) that none of the corporation's shares has been issued; or

(ii) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

NEW SECTION. **Section 185. Dissolution by board of directors and shareholders.** (1) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution unless:

(i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum

for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

NEW SECTION. **Section 186. Articles of dissolution.** (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date that dissolution was authorized; and

(c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(2) The articles of dissolution take effect on the effective date determined in accordance with [section 6]. A corporation is dissolved on the effective date of its articles of dissolution.

(3) For purposes of [sections 184 through 192], "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

NEW SECTION. **Section 187. Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days after its effective date.

(2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a

statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(g) The articles of revocation of dissolution take effect on the effective date determined in accordance with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.

(h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

NEW SECTION. **Section 188. Effect of dissolution.** (1) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) making distributions of its remaining assets among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities;

(c) subject its directors or officers to standards of conduct different from those prescribed in [sections 93 through 133];

(d) change:

(i) quorum or voting requirements for its board of directors or shareholders;

(ii) provisions for selection, resignation, or removal of its directors or officers or both; or

(iii) provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of

dissolution; or

(g) terminate the authority of the registered agent of the corporation.

(3) A distribution in liquidation under this section may be made only by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

NEW SECTION. **Section 189. Known claims against dissolved corporation.** (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

NEW SECTION. **Section 190. Other claims against dissolved corporations.** (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) be:

(i) published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located; or

(ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation's website;

(b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the first publication date of the notice:

(a) a claimant who was not given written notice under [section 189];

(b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

NEW SECTION. **Section 191. Court proceedings.** (1) A dissolved corporation that has published a notice under [section 190] may file an application with the district court of the county where its principal office is located or, if its principal office is not located in this state, of the first judicial district for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [section 190(3)].

(2) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and those claims may not be enforced against a shareholder who received assets in liquidation.

NEW SECTION. **Section 192. Director duties.** (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment of or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191] may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are barred or satisfied under [sections 189 through 191].

NEW SECTION. **Section 193. Grounds for administrative dissolution.** The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, ~~taxes,~~ interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

NEW SECTION. **Section 194. Procedure for and effect of administrative dissolution.** (1) ~~If the secretary of state determines that~~ ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL COMPILE A LIST OF CORPORATIONS FOR WHICH one or more grounds exist under [section 193] for dissolving a corporation, AND the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

NEW SECTION. **Section 195. Reinstatement following administrative dissolution.** (1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated; AND

(c) state that the corporation's name satisfies the requirements of [section 39]~~; and~~

~~(d) contain a certificate from the department of revenue reciting that all taxes imposed pursuant to Title 15 have been paid~~.

(2) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION FOR REINSTATEMENT:

(A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE

15 HAVE BEEN PAID;

(B) A FILING FEE, WHICH MUST BE SET AND DEPOSITED BY THE SECRETARY OF STATE IN ACCORDANCE WITH 2-15-405; AND

(C) ALL ANNUAL REPORTS NOT YET FILED WITH THE SECRETARY OF STATE AND RELATED FEES AND PENALTIES.

~~(2)~~(3) If the secretary of state determines that the application contains the information, DOCUMENTS, AND FEES required by ~~subsection (1)~~ SUBSECTIONS (1) AND (2) and that the information ~~is~~, DOCUMENTS, AND FEES ARE COMPLETE AND correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

~~(3)~~(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

NEW SECTION. **Section 196. Appeal from denial of reinstatement.** (1) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under [section 45] with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 197. Grounds for judicial dissolution.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of the shares.

(3) For the purposes of this section:

(a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) the term "shareholder" in subsection (2) means a record shareholder, a beneficial shareholder, and

a voting trust beneficial owner.

NEW SECTION. **Section 198. Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under [section 201] and accompanied by a copy of [section 201].

NEW SECTION. **Section 199. Receivership or custodianship.** (1) Unless an election to purchase has been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) the receiver:

(A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private

sale; and

(B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state;

(ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(b) The receiver or custodian has other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

NEW SECTION. **Section 200. Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 197] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance with [sections 189 and 190].

NEW SECTION. **Section 201. Election to purchase in lieu of dissolution.** (1) Unless the transfer is altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow.

If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and number of shares owned by the petitioner and the name of and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares on the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or another date the court finds appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase on terms and conditions the court finds appropriate, which may include payment of the purchase price in installments when necessary in the interests of equity, provision for security to ensure payment of the purchase price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes or series as far as practicable and may direct that holders of a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning

shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the order becomes final.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

NEW SECTION. **Section 202. Deposit with state treasurer.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person or the person's representative that amount.

NEW SECTION. **Section 203. Foreign corporations -- governing law.** (1) The law of the jurisdiction of formation of a foreign corporation governs:

(a) the internal affairs of the foreign corporation; and

(b) the interest holder liability of its shareholders.

(2) A foreign corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

(3) Registration of a foreign corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic corporation may not engage in or exercise in this state.

NEW SECTION. **Section 204. Registration to do business in this state.** (1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (4), THE failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A CONTRACT BETWEEN THE STATE OF MONTANA, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND A FOREIGN CORPORATION THAT HAS FAILED TO REGISTER TO DO BUSINESS AS REQUIRED UNDER [SECTION 207(4)] IS VOIDABLE BY THE STATE, THE CONTRACTING STATE AGENCY, OR THE CONTRACTING POLITICAL SUBDIVISION.

~~(4)~~(5) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

~~(5)~~(6) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through 214].

NEW SECTION. **Section 205. Foreign registration statement.** To register to do business in this state, a foreign corporation shall deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the foreign corporation and state:

(1) the corporate name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(2) the foreign corporation's jurisdiction of formation;

(3) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers;

(6) a brief description of the nature of its business to be conducted in this state; and

(7) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

NEW SECTION. **Section 206. Amendment of foreign registration statement.** A registered foreign corporation shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its jurisdiction of formation unless its registration is determined to have been withdrawn under [section 210] or transferred under [section 212]; or

(3) an address required by [section 205(3)].

NEW SECTION. **Section 207. Activities not constituting doing business.** (1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that IS COMPLETED WITHIN 30 DAYS AND THAT is not in the course of ~~similar~~ REPEATED transactions OF A SIMILAR NATURE; and

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign

corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

(4) A FOREIGN CORPORATION IS TRANSACTING BUSINESS WITHIN THE MEANING OF SUBSECTION (1) IF IT ENTERS INTO A CONTRACT, INCLUDING A CONTRACT ENTERED INTO PURSUANT TO TITLE 18, WITH THE STATE OF MONTANA, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND MUST REGISTER TO DO BUSINESS UNDER [SECTIONS 203 THROUGH 214] BEFORE ENTERING INTO THE CONTRACT. THIS SUBSECTION DOES NOT APPLY TO CONTRACTS FOR GOODS FULLY PREPARED OR SERVICES FULLY PERFORMED OUT OF STATE FOR DELIVERY OR USE IN THIS STATE.

NEW SECTION. **Section 208. Noncomplying name of foreign corporation.** (1) A foreign corporation whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with [section 39] by filing a foreign registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212] setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do business in this state with an alternate name, a foreign corporation shall do business in this state under:

(a) the alternate name;

(b) the foreign corporation's name, with the addition of its jurisdiction of formation; or

(c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

(2) If a registered foreign corporation changes its name after registration to a name that does not comply with [section 39], it may not do business in this state until it complies with subsection (1) of this section by amending its registration statement to adopt an alternate name that complies with [section 39].

NEW SECTION. **Section 209. Withdrawal of registration of registered foreign corporation.** (1) A registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

(a) the name of the foreign corporation and its jurisdiction of formation;

(b) that the foreign corporation is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign corporation revokes the authority of its registered agent in this state;

(d) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(e) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(f) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 210. Withdrawal upon domestication or conversion to certain domestic entities.** A registered foreign corporation that domesticates to a domestic business corporation or converts to a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership is considered to have withdrawn its registration on the effective date of that event.

NEW SECTION. **Section 211. Withdrawal upon dissolution or conversion to nonfiling entities.** (1) A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic or foreign nonfiling entity and must state:

(a) in the case of a foreign corporation that has completed winding up:

(i) its name and jurisdiction of formation;

(ii) that the foreign corporation withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iii) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(iv) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from

the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(v) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation; or

(b) in the case of a foreign corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting foreign corporation and its jurisdiction of formation;

(ii) the type of the nonfiling entity to which it has converted and its name and jurisdiction of formation;

(iii) that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iv) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(v) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(vi) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 212. Transfer of registration.** (1) If a registered foreign corporation merges into a nonregistered foreign corporation or converts to a foreign corporation required to register with the secretary of state to do business in this state, the foreign corporation shall deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or converted foreign corporation and must state:

(a) the name of the registered foreign corporation and its jurisdiction of formation before the merger or conversion;

(b) the name of the surviving or converted foreign corporation and its jurisdiction of formation after the

merger or conversion and, if the name does not comply with [section 39], an alternate name adopted pursuant to [section 208]; and

(c) the following information regarding the surviving or converted foreign corporation after the merger or conversion:

(i) the street and mailing addresses of the principal office of the foreign corporation and, if the law of the foreign corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office.

(2) On the effective date of a transfer of registration statement as determined in accordance with [section 6], the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign corporation into which it has merged or to which it has been converted.

NEW SECTION. **Section 213. Administrative termination of registration.** (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

~~(2) The secretary of state may terminate the registration of a registered foreign corporation by:~~

~~(a) filing a certificate of termination; and~~

~~(b) delivering a copy of the certificate of termination to the foreign corporation's registered agent or, if the foreign corporation does not have a registered agent, to the foreign corporation's principal office.~~

(2) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL COMPILE A LIST OF

REGISTERED FOREIGN CORPORATIONS FOR WHICH ONE OR MORE GROUNDS EXIST UNDER SUBSECTION (1) FOR TERMINATING ITS REGISTRATION AND SHALL SERVE THE REGISTERED FOREIGN CORPORATION WITH WRITTEN NOTICE OF THE DETERMINATION UNDER [SECTION 45].

(3) IF THE REGISTERED FOREIGN CORPORATION DOES NOT CORRECT EACH GROUND FOR TERMINATION OR DEMONSTRATE TO THE REASONABLE SATISFACTION OF THE SECRETARY OF STATE THAT EACH GROUND FOR TERMINATION DETERMINED BY THE SECRETARY OF STATE DOES NOT EXIST WITHIN 60 DAYS AFTER THE NOTICE IS DELIVERED, THE SECRETARY OF STATE MAY TERMINATE THE REGISTRATION OF A REGISTERED FOREIGN CORPORATION BY ISSUING A CERTIFICATE OF TERMINATION. The certificate of termination must state~~:~~

~~(a)~~ the effective date of the termination, which must be not less than ~~90~~ 60 days after the secretary of state delivers the ~~copy of the certificate of termination~~ NOTICE as prescribed in subsection (2)(b)~~; and~~

~~(b) the grounds for termination under subsection (1)~~.

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination ~~unless before that date the foreign corporation cures each ground for termination stated in the certificate of termination. If the foreign corporation cures each ground, the secretary of state shall file a statement that the certificate of termination is withdrawn~~.

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 214. Action by attorney general.** The attorney general may maintain an action to enjoin a foreign corporation from doing business in this state in violation of [sections 1 through 221].

NEW SECTION. **Section 215. Corporate records.** (1) A corporation shall maintain the following records:

(a) its articles of incorporation as currently in effect;

(b) any notices to shareholders referred to in [section 3(11)(e)] specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in [section 3(11)(e)];

(c) its bylaws as currently in effect;

(d) all written communications within the past 3 years to shareholders generally;

(e) minutes of all meetings of and records of all actions taken without a meeting by its shareholders, its board of directors, and board committees established under [section 109];

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 221].

(2) A corporation shall maintain all annual financial statements prepared for the corporation for its last 3 fiscal years or any shorter period of existence and any audit or other reports with respect to those financial statements.

(3) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(4) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the address of and the number and class or series of shares held by each shareholder. Nothing in this subsection requires the corporation to include in the record the electronic mail address or other electronic contact information of a shareholder.

(5) A corporation shall maintain the records specified in this section in a manner that allows them to be made available for inspection within a reasonable time.

NEW SECTION. **Section 216. Inspection rights of shareholders.** (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 215(1)], excluding minutes of meetings of and records of actions taken without a meeting by the corporation's board of directors and board committees established under [section 109], if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) the financial statements of the corporation maintained in accordance with [section 215(2)];

(b) accounting records of the corporation;

(c) excerpts from minutes of any meeting of or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with [section 215(1)]; and

(d) the record of shareholders maintained in accordance with [section 215(4)].

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) the shareholder's demand is made in good faith and for a proper purpose;

(b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) the records are directly connected with the shareholder's purpose.

(4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (2).

(5) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different from the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made the information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide this information does not affect the validity of action taken at the meeting.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(7) This section does not affect:

(a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of production of records described in subsection (2) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (3) of this section.

(8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 217. Scope of inspection right.** (1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under [section 216].

(2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records

under [section 216] by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under [section 216(2)(d)] by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(4) The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of those costs.

NEW SECTION. **Section 218. Court-ordered inspection.** (1) If a corporation does not allow a shareholder who complies with [section 216(1)] to inspect and copy any records required by that section to be available for inspection, the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder who complies with [section 216(2)] to inspect and copy the records required by that section, the shareholder, if the shareholder also complies with [section 216(3)], may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under [section 216(2)], it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

(a) a reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or

(b) required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

NEW SECTION. **Section 219. Inspection rights of directors.** (1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a

board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

NEW SECTION. **Section 220. Financial statements for shareholders.** (1) Upon the written request of a shareholder, a corporation shall deliver or make available to the requesting shareholder by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the corporation for which annual financial statements have been prepared. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for the specified period, the corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported on by a public accountant, the report must also be delivered or made available to the requesting shareholder.

(2) A corporation shall deliver or make available and provide written notice of availability of the financial statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a written request to the corporation.

(3) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(4) Notwithstanding the provisions of subsections (1) through (3):

(a) as a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of the financial statements; and

(b) the corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

(5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (2) within 5 business days of delivery of the request to the corporation:

(a) The requesting shareholder may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(b) If the court orders delivery of or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(c) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

(d) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(e) If the court orders delivery of or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

NEW SECTION. **Section 221. Annual report for secretary of state.** (1) Each domestic corporation shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the corporation;

(b) the street and mailing address of its registered office and the name of its registered agent at that office in this state;

(c) the street and mailing address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(b) the foreign corporation's jurisdiction of formation;

(c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(d) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(e) the names and business addresses of its directors and principal officers; and

(f) a brief description of the nature of its business conducted in this state.

(3) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15 of subsequent years.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing ~~and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the notice from the secretary of state becomes effective as determined in accordance with [section 15], it is considered timely filed~~. THE CORRECTED REPORT MUST BE FILED BY APRIL 15 TO BE CONSIDERED TIMELY FILED.

Section 222. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider

of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity~~, as defined in 35-1-113,~~ that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 223. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation -- application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or the officer's agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include,

at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation ~~in 35-1-216~~;

(iii) the information required by 35-7-105(1);

(iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 224. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ Title 35, upon request

of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana."

Section 225. Section 20-5-320, MCA, is amended to read:

"20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not

required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid

as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

Section 226. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure -- rulemaking authority. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in ~~35-1-310~~ [section 39].

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state."

Section 227. Section 32-1-112, MCA, is amended to read:

"32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of ~~Title 35, chapter 1,~~ [sections 1 through 221] apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with ~~Title 35, chapter 1~~ [sections 1 through 221].

(2) The provisions of [sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216] ~~35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10,~~ do not apply to banks."

Section 228. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to

organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in ~~Title 35, chapter 1~~ [sections 1 through 221]. The articles of incorporation must set forth:

(a) the information required by ~~35-1-216(1)~~ [section 28(1)];

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in ~~35-1-216(2)~~ [section 28(2)].

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 229. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in ~~Title 35, chapter 1, part 11~~ [sections 215 through 221]."

Section 230. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock -- rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing,

and public services. A bank may also, with the department's approval, purchase interests in an entity~~, as defined in 35-1-113,~~ that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 231. Section 33-3-103, MCA, is amended to read:

"33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935~~ [sections 184 through 188] apply to the voluntary dissolution of a domestic insurer."

Section 232. Section 33-3-215, MCA, is amended to read:

"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8,~~ [sections 171

through 183] as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13."

Section 233. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution. (1) At least 60 days before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-931~~ [section 184], the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required ~~by 35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the

resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 234. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under ~~Title 35, chapter 1, part 9, or~~ Title 35, chapter 2, part 7, or [sections 184 through 202] apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 235. Section 33-3-603, MCA, is amended to read:

"33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under ~~35-1-934 or~~ 35-2-724 or [section 187], the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 236. Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the

commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners, including electronically if required by the commissioner, and completed in accordance with instructions provided by the national association of insurance commissioners and the national association of insurance commissioners' accounting practices and procedures manual.

(5) All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at the time of licensure.

(6) (a) The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.

(b) Each risk retention group shall disclose the determinations of independence to the commissioner annually.

(c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.

(ii) A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's immediate family, or any business with which the person is affiliated:

(A) has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group, compensation or payment of any item of value that accounts for either 5% of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;

(B) has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or

(C) has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.

(7) (a) A material service provider contract with a risk retention group or its renewal:

(i) may not exceed 5 years;

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for

underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of:

(i) the integrity of the financial statements;

(ii) the board's compliance with legal and regulatory requirements; and

(iii) the qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(d) discuss policies with respect to risk assessment and risk management;

(e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(f) review with the independent auditor any audit problems or difficulties and management's response;

(g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(h) require the external auditor to rotate the lead or coordinating audit partner having primary

responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and

(i) report regularly to the board of directors.

(11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.

(b) For the purposes of this subsection (11), the information must include:

(i) the process by which the directors are elected by the owner or the insureds;

(ii) qualification standards, responsibilities, and compensation for directors;

(iii) director access to management and, as necessary and appropriate, to independent advisors;

(iv) director orientation and continuing education;

(v) management succession policies and procedures; and

(vi) annual board performance evaluation policies and procedures.

(12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.

(b) The code must address:

(i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ director's conflicting interest transactions as defined in [section 129];

(ii) confidentiality;

(iii) fair dealing;

(iv) protection and proper use of risk retention group assets;

(v) compliance with all applicable laws, rules, and regulations; and

(vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

Section 237. Section 33-12-104, MCA, is amended to read:

"33-12-104. Authorization of investments by board of directors. (1) An insurer's board of directors

shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in ~~35-1-418~~ [section 111]."

Section 238. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the

individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction

with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member, employee, officer, director, or stockholder of a business entity who is acting as an insurance producer in this state has obtained a license;

(e) (i) with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority~~ registration under ~~35-1-1312~~ [section 11] or filed articles of incorporation under ~~35-1-220~~ [section 29].

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 239. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of

authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first ~~obtains from~~ registers with the secretary of state ~~a certificate of authority~~ to transact business in this state as a foreign corporation under ~~35-1-1028~~ [section 204].

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain~~,~~ at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner

determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

Section 240. Section 35-1-1403, MCA, is amended to read:

"35-1-1403. Purpose. (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under ~~35-1-114~~ [section 35] and any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with subsection (2).

(2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the

identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote."

Section 241. Section 35-1-1406, MCA, is amended to read:

"35-1-1406. Benefit corporation governance -- liability. (1) A director of a public benefit corporation shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or

group referred to in this subsection (2) over any other factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with this part is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

Section 242. Section 35-1-1407, MCA, is amended to read:

"35-1-1407. Conversion to benefit corporation. (1) A corporation may become a benefit corporation under this part by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving

corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if the conversion is approved by the other entity by at least the minimum status vote."

Section 243. Section 35-1-1408, MCA, is amended to read:

"35-1-1408. Termination -- reorganization -- other actions affecting benefit corporation. (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in ~~35-1-827~~ [section 172]."

Section 244. Section 35-2-826, MCA, is amended to read:

"35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under ~~35-1-309, 35-1-311,~~ 35-2-306, ~~or~~ 35-2-307, [section 40], or [section 41];

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is

incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 245. Section 35-4-503, MCA, is amended to read:

"35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in ~~Title 35, chapter 6~~ [sections 193 through 196]."

Section 246. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service of process. (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments or a true copy certified by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under ~~35-1-1028~~ [section 205] and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that

service of process may be made upon some person, a citizen of this state whose principal place of business is designated in the certificate. Service of process, when made upon the agent, is valid service on the business trust."

Section 247. Section 35-6-101, MCA, is amended to read:

"35-6-101. Applicability to corporations presently in default. (1) The secretary of state may initiate procedures consistent with this chapter to dissolve nonprofit corporations organized under Title 35, chapters 2 and 3 ~~that have been in default prior to July 1, 1977~~.

(2) Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections 1 through 221] is governed by [sections 193 through 196].

(3) As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized under Title 35, chapters 4 and 9, or [sections 1 through 221]."

Section 248. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution -- grounds. (1) Any domestic corporation organized under Title 35, chapters 2 and 3, ~~whether for profit or not for profit,~~ may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 249. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution -- procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or~~ 35-2-729~~, whichever is appropriate,~~ is applicable to liquidate the property and assets if necessary."

Section 250. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through 35-1-943 or~~ 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 251. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain

business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by ~~35-1-308~~ [section 39].

(4) Contests over names registered under this section are governed by ~~35-1-310~~ [section 39]."

Section 252. Section 35-9-103, MCA, is amended to read:

"35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 253. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of

shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of ~~35-1-628~~ [section 57] and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 254. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the

result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under ~~Title 35, chapter 1, part 8,~~ [sections 161 through 168] or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 255. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208."

Section 256. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-416~~ [section 93]."

Section 257. Section 35-9-303, MCA, is amended to read:

"35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

Section 258. Section 35-9-402, MCA, is amended to read:

"35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 259. Section 35-9-404, MCA, is amended to read:

"35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through 35-1-935~~ [sections 184 through 188].

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders

of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 260. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section 197].

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has ~~dissenters'~~ appraisal rights under this chapter or ~~35-1-826 through 35-1-839~~ [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have."

Section 261. Section 35-9-504, MCA, is amended to read:

"35-9-504. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 262. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

Section 263. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) ~~Such~~ The persons desiring to incorporate ~~must~~ shall prepare, sign, acknowledge, and file a petition with the clerk of the district court of the

county in which the lands or the greater portion of the lands included in the petition are situate, ~~such~~ the petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is to be formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which ~~shall~~ may not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. ~~Such~~ The directors or trustees ~~shall~~ must at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for ~~such~~ the incorporation or district, with a description of the lands ~~which~~ that each owns and that are proposed to be submitted to ~~said~~ the corporation or district and the character of the ~~same~~ lands and their production, ~~also~~ as well as a consent of the owners to submit the lands to the provisions ~~hereof~~ of this section;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing ~~the same~~ them in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) ~~Such~~ The petition ~~shall~~ must be accompanied by a map giving location of the lands sought to be included in ~~such~~ the corporation or district, but nothing ~~herein to be~~ in this subsection may be construed as requiring ~~such~~ the lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of ~~such~~ the corporation or district, ~~shall~~ must be filed with the petition."

Section 264. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association."

Section 265. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in ~~35-1-216~~ [section 28]; and

(b) provisions for classification of members in a cooperative.

(3) A cooperative's articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 266. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge."

Section 267. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed $450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations~~, as defined in 35-1-113,~~ may not apply."

Section 268. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to [sections 1 through 221] or Title 85, chapter 6, part 1, ~~or Title 35, chapter 1, part 2,~~ for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to ~~Title 35, chapter 1, part 2,~~ [sections 1 through 221] or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

NEW SECTION. **Section 269. Repealer.** The following sections of the Montana Code Annotated are repealed:

35-1-112. Short title.
35-1-113. Definitions.
35-1-114. Purposes.
35-1-115. General powers.
35-1-116. Notice.
35-1-117. Ultra vires.
35-1-118. Reservation of power to amend or repeal.
35-1-119. Liability of and to ostensible corporations.
35-1-215. Incorporators.
35-1-216. Articles of incorporation.
35-1-217. Filing requirements.
35-1-218. Facsimile filing -- requirements -- liability.
35-1-219. Effective time and date of document.
35-1-220. Incorporation.
35-1-221. Correcting filed document.
35-1-222. Organization of corporation.
35-1-225. Authority to amend.
35-1-226. Amendment by board of directors.
35-1-227. Amendment by board of directors and shareholders.
35-1-228. Voting on amendments by voting groups.
35-1-229. Amendment before issuance of shares.
35-1-230. Articles of amendment.

35-1-231. Restated articles of incorporation.
35-1-232. Amendment pursuant to reorganization.
35-1-233. Effect of amendment.
35-1-234. Bylaw amendment by board of directors or shareholders.
35-1-235. Extension of duration of corporation.
35-1-236. Bylaws.
35-1-237. Emergency bylaws.
35-1-238. Bylaw increasing quorum or voting requirement for shareholders.
35-1-239. Bylaw increasing quorum or voting requirement for directors.
35-1-308. Corporate name.
35-1-309. Reserved name.
35-1-310. Contest of registration of name -- penalty.
35-1-311. Registered name of foreign corporation.
35-1-416. Requirement for and duties of board of directors.
35-1-417. Qualifications of directors.
35-1-418. General standards for directors.
35-1-419. Number and election of directors.
35-1-420. Election of directors by certain classes of shareholders.
35-1-421. Terms of directors generally.
35-1-422. Staggered terms for directors.
35-1-423. Resignation of directors.
35-1-424. Removal of directors.
35-1-425. Removal of directors by judicial proceeding.
35-1-426. Vacancy on board.
35-1-427. Compensation of directors.
35-1-428. Penalty for signing false document.
35-1-431. Meetings.
35-1-432. Action without meeting.
35-1-433. Notice of meeting.
35-1-434. Waiver of notice.

35-1-435. Quorum -- voting.
35-1-439. Committees.
35-1-441. Required officers.
35-1-442. Duties of officers.
35-1-443. Standards of conduct for officers.
35-1-444. Resignation and removal of officers.
35-1-445. Contract rights of officers.
35-1-451. Definitions.
35-1-452. Authority to indemnify.
35-1-453. Mandatory indemnification.
35-1-454. Advance for expenses.
35-1-455. Court-ordered indemnification.
35-1-456. Determination and authorization of indemnification.
35-1-457. Indemnification of officers, employees, and agents.
35-1-458. Insurance.
35-1-459. Application.
35-1-461. Definitions.
35-1-462. Judicial action.
35-1-463. Directors' action.
35-1-464. Shareholders' action.
35-1-516. Annual meeting.
35-1-517. Special meeting.
35-1-518. Court-ordered meeting.
35-1-519. Action without meeting.
35-1-520. Notice of meeting.
35-1-521. Waiver of notice.
35-1-522. Record date.
35-1-523. Shareholders' list for meeting.
35-1-524. Voting entitlement of shares.
35-1-525. Proxies.

35-1-526. Shares held by nominees.
35-1-527. Corporation's acceptance of votes.
35-1-528. Quorum and voting requirements for voting groups.
35-1-529. Action by single and multiple voting groups.
35-1-530. Greater quorum or voting requirements.
35-1-531. Voting for directors -- cumulative voting.
35-1-532. Voting trusts.
35-1-533. Voting agreements.
35-1-534. Liability of shareholders.
35-1-535. Shareholders' preemptive rights.
35-1-541. Definitions.
35-1-542. Standing.
35-1-543. Demand.
35-1-544. Stay of proceedings.
35-1-545. Dismissal.
35-1-546. Discontinuance or settlement -- notice.
35-1-547. Payment of expenses.
35-1-548. Applicability to foreign corporations.
35-1-550. Number of shareholders.
35-1-618. Authorized shares.
35-1-619. Terms of class or series determined by board of directors.
35-1-620. Issued and outstanding shares.
35-1-621. Fractional shares.
35-1-622. Subscription for shares before incorporation.
35-1-623. Issuance of shares.
35-1-624. Share dividends.
35-1-625. Share options.
35-1-626. Form and content of certificates.
35-1-627. Shares without certificates.
35-1-628. Restriction on transfer or registration of transfer of shares and other securities.

35-1-629. Expense of issue.
35-1-630. Corporation's acquisition of its own shares.
35-1-712. Distributions to shareholders.
35-1-713. Liability for unlawful distributions.
35-1-813. Merger.
35-1-814. Share exchange.
35-1-815. Action on plan.
35-1-816. Articles of merger or share exchange.
35-1-817. Effect of merger or share exchange.
35-1-818. Merger of subsidiary.
35-1-819. Merger or share exchange with foreign corporation.
35-1-820. Shareholder agreements.
35-1-822. Sale of assets in regular course of business -- mortgage of assets.
35-1-823. Sale of assets other than in regular course of business.
35-1-826. Definitions.
35-1-827. Right to dissent.
35-1-828. Dissent by nominees and beneficial owners.
35-1-829. Notice of dissenters' rights.
35-1-830. Notice of intent to demand payment.
35-1-831. Dissenters' notice.
35-1-832. Duty to demand payment.
35-1-833. Share restrictions.
35-1-834. Payment.
35-1-835. Failure to take action.
35-1-836. After-acquired shares.
35-1-837. Procedure if shareholder dissatisfied with payment or offer.
35-1-838. Court action.
35-1-839. Court costs and attorney fees.
35-1-931. Dissolution by incorporators or initial directors.
35-1-932. Dissolution by board of directors and shareholders.

35-1-933.	Articles of dissolution.
35-1-934.	Revocation of dissolution.
35-1-935.	Effect of dissolution.
35-1-936.	Known claims against dissolved corporation.
35-1-937.	Unknown claims against dissolved corporation.
35-1-938.	Grounds for judicial dissolution.
35-1-939.	Discretion of court to grant relief other than dissolution.
35-1-940.	Procedure for judicial dissolution.
35-1-941.	Receivership or custodianship.
35-1-942.	Decree of dissolution.
35-1-943.	Deposit with state treasurer.
35-1-944.	State dissolution or withdrawal certificate.
35-1-1026.	Authority to transact business required.
35-1-1027.	Consequences of transacting business without authority.
35-1-1028.	Application for certificate of authority.
35-1-1029.	Amended certificate of authority.
35-1-1030.	Effect of certificate of authority.
35-1-1031.	Corporate name of foreign corporation.
35-1-1037.	Withdrawal of foreign corporation.
35-1-1038.	Grounds for revocation.
35-1-1039.	Procedure for and effect of revocation.
35-1-1040.	Appeal from revocation.
35-1-1104.	Annual report for secretary of state.
35-1-1106.	Corporate records.
35-1-1107.	Inspection of records by shareholders.
35-1-1108.	Scope of inspection right.
35-1-1109.	Court-ordered inspection.
35-1-1110.	Financial statement for shareholders.
35-1-1111.	Other reports to shareholders.
35-1-1206.	Fees for filing, copying, and services.

35-1-1307. Secretary of state -- powers -- rulemaking.
35-1-1308. Forms.
35-1-1309. Filing duty of secretary of state.
35-1-1310. Appeal from secretary of state's refusal to file document.
35-1-1311. Evidentiary effect of copy of filed document.
35-1-1312. Certificate of existence or authority.
35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

NEW SECTION. **Section 270. Transition -- application to existing domestic corporations.** [Sections 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221] that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

NEW SECTION. **Section 271. Codification instruction.** (1) [Sections 1 through 26] are intended to be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1, apply to [sections 1 through 26].

(2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

(3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

(4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

(5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

(6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part 6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

(7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

(8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

(9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

(10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14, part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

(11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14, part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

(12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14, part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

(13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14, part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

(14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14, part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

(15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14, part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

(16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14, part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].

NEW SECTION. **Section 272. Saving clause.** (1) Except as to procedural provisions, [sections 1 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].

NEW SECTION. **Section 273. Severability.** If a part of [sections 1 through 221] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **SECTION 274. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JUNE 1, 2020.

NEW SECTION. **Section 275. Applicability -- existing foreign corporations.** A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] is subject to [sections 1 through 221], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221].

- END -

SENATE BILL NO. 325

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112, 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104,

33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; ~~AND~~ REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 221] may be cited as the "Montana Business Corporation Act".

NEW SECTION. **Section 2. Reservation of power to amend or repeal.** The legislature has power to amend or repeal all or part of [sections 1 through 221] at any time, and all domestic and foreign corporations subject to [sections 1 through 221] are governed by the amendment or repeal.

NEW SECTION. **Section 3. Requirements for documents -- extrinsic facts.** (1) A document must satisfy the requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by [sections 1 through 221] and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing~~. Delivery may be made~~ by electronic transmission ~~if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document~~. THE SECRETARY OF STATE ~~MAY AUTHORIZE~~ SHALL ALLOW EXCEPTIONS TO THE REQUIREMENT OF FILING DOCUMENTS BY ELECTRONIC TRANSMISSION.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the

time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of [sections 1 through 221] except [sections 203 through 214] or [section 221]; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed document;

(ii) the registered office of any entity required in a filed document;

(iii) the registered agent of any entity required in a filed document;

(iv) the number of authorized shares and designation of each class or series of shares;

(v) the effective date of a filed document; and

(vi) any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a document that is a matter of public record and the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

NEW SECTION. **Section 4. Forms.** (1) (a) The secretary of state may prescribe and furnish on request forms for:

(i) an application for a certificate of existence or certificate of registration;

(ii) a foreign corporation's registration statement;

(iii) a foreign corporation's statement of withdrawal;

(iv) a foreign corporation's transfer of registration statement; and

(v) the annual report.

(b) If the secretary of state requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by [sections 1 through 221], but their use is not mandatory.

NEW SECTION. **Section 5. Filing -- service -- copying fees.** (1) The secretary of state shall establish fees for:

(a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];

(b) issuing certificates and statements as required by [sections 1 through 26]; and

(c) copying and transmitting documents, priority handling, and responding to requests for information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

NEW SECTION. **Section 6. Effective date -- filed document.** (1) Except to the extent otherwise

provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

(a) on the date and at the time of filing, as provided in [section 8(2)];

(b) on the date of filing and at the time specified in the document as its effective time if later than the time under subsection (1)(a);

(c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or

(d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(2) If a filed document does not specify the time zone or place at which a date or time or both are to be determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this state.

NEW SECTION. **Section 7. Correcting filed document.** (1) A document filed by the secretary of state pursuant to [sections 1 through 221] may be corrected if:

(a) the document contains an inaccuracy;

(b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

(c) the electronic transmission was defective.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the inaccuracy or defect to be corrected; and

(iii) correct the inaccuracy or defect; and

(b) by delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

NEW SECTION. **Section 8. Filing duty -- secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall return to the person who delivered the document for filing a copy

of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within ~~5~~ 10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not create a presumption that:

(a) the document does or does not conform to the requirements of [sections 1 through 221]; or

(b) the information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

NEW SECTION. **Section 9. Appeal from secretary of state -- refusal to file document.** (1) If the secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing may petition the district court of the first judicial district to compel its filing. The document and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 10. Evidentiary effect -- certified copy of filed document.** A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

NEW SECTION. **Section 11. Certificate of existence or registration.** (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation.

(2) A certificate of existence sets forth:

(a) the domestic corporation's corporate name;

(b) that the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence of the domestic corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state;

(e) that articles of dissolution have not been filed;

(f) that the corporation is not administratively dissolved and a proceeding is not pending under [section 194]; and

(g) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) A certificate of registration sets forth:

(a) the foreign corporation's name used in this state;

(b) that the foreign corporation is registered to do business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the registration of the foreign corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state; and

(e) other facts of record in the office of the secretary of state that may be requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied on as conclusive evidence of the facts stated in the certificate.

NEW SECTION. **Section 12. Penalty -- signing false document.** (1) The execution of any document required to be filed with the secretary of state under [sections 1 through 26] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under [sections 1 through 26].

NEW SECTION. **Section 13. Powers.** (1) The secretary of state has the power reasonably necessary

to perform the duties required of the secretary of state by [sections 1 through 221].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 26], including establishing necessary fees.

NEW SECTION. **Section 14. General definitions.** For the purposes of [sections 1 through 221], unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in [section 28], all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary of state under any provision of [sections 1 through 221] that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under [sections 1 through 221] that restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of the entity means the document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Conspicuous" means written, displayed, or presented so that a reasonable person against whom the writing is to operate should have noticed it.

(5) "Corporation", "domestic corporation", "business corporation", or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under [sections 1 through 221].

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, and commercial delivery and, if authorized in accordance with [section 15], by electronic transmission.

(7) "Distribution" means a direct or indirect transfer of cash or other property except a corporation's own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of:

(a) a payment of a dividend;

(b) a purchase, redemption, or other acquisition of shares;

(c) a distribution of indebtedness;

(d) a distribution in liquidation; or

(e) another form.

(8) "Document" means:

(a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of those instruments; or

(b) an electronic record.

(9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the law of this state.

(10) "Effective date", when referring to a document accepted for filing by the secretary of state, means the time and date determined in accordance with [section 6].

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(13) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) "Eligible interests" means interests or memberships.

(16) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) "Entity" includes:

(a) a domestic and foreign business corporation;

(b) a domestic and foreign nonprofit corporation;

(c) an estate;

(d) a trust;

(e) a domestic and foreign unincorporated entity; and

(f) a state, the United States, and a foreign government.

(18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including attorney fees.

(19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.

(22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.

(23) "Foreign registration statement" means the foreign registration statement described in [section 205].

(24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.

(25) "Governor" means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

(26) "Includes" and "including" denote a partial definition or a nonexclusive list.

(27) "Individual" means a natural person.

(28) "Interest" means either or both of the following rights under the organic law governing an unincorporated entity:

(a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(29) "Interest holder" means a person who holds of record an interest.

(30) (a) "Interest holder liability" means:

(i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or eligible entity that is imposed on a person:

(A) solely by reason of the person's status as a shareholder, member, or interest holder; or

(B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders or categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

(ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

(b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subsection (30)(a) when the corporation or eligible entity incurs the liability.

(31) "Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

(32) "Means" denotes an exhaustive definition.

(33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(34) "Merger" means a transaction pursuant to [section 162].

(35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic record.

(36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

(37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(38) "Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

(39) "Person" includes an individual and an entity.

(40) "Principal office" means the office, whether in this state or out of this state, designated in the annual report or foreign registration statement as the place where the principal executive offices of a domestic or foreign corporation are located.

(41) (a) "Private organic rules" means:

(i) the bylaws of a domestic or foreign business or nonprofit corporation; or

(ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record, if any.

(b) When private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(43) (a) "Public organic record" means:

(i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

(ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates the unincorporated entity and is required to be filed.

(b) When a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(44) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the record date is fixed, the determination must be made as of the close of business at the principal office of the corporation on the record date.

(45) "Record shareholder" means:

(a) the person in whose name shares are registered in the records of the corporation; or

(b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to [section 73] on file with the corporation to the extent of the rights granted by the certificate.

(46) "Registered foreign corporation" means a foreign corporation registered to do business in this state pursuant to [sections 203 through 214].

(47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(48) "Share exchange" means a transaction pursuant to [section 163].

(49) "Shareholder" means a record shareholder.

(50) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation are divided.

(51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed signature; or

(b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, including an electronic signature in an electronic transmission.

(52) "State", when referring to a part of the United States, includes a state, commonwealth, or territory or insular possession of the United States and their agencies and governmental subdivisions.

(53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(54) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following:

(i) a domestic or foreign business or nonprofit corporation;

(ii) a series of a limited liability company or of another type of entity;

(iii) an estate;

(iv) a trust; or

(v) a state, the United States, or a foreign government.

(b) The term includes a general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(56) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(58) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or [sections 1 through 221] are entitled to vote and be counted together collectively on a matter at

a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 221] to vote generally on the matter are for that purpose a single voting group.

(59) "Voting power" means the current power to vote in the election of directors.

(60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to [section 80(1)].

(61) "Writing" or "written" means any information in the form of a document.

NEW SECTION. **Section 15. Notices and other communications.** (1) A notice under [sections 1 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [sections 1 through 221] must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include:

(a) a newspaper of general circulation in the area where published;

(b) radio, television, or other form of public broadcast communication; or

(c) other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10). A CORPORATION THAT FILES DOCUMENTS WITH THE OFFICE OF THE SECRETARY OF STATE UNDER [SECTIONS 1 THROUGH 221] IS CONSIDERED TO HAVE GIVEN ITS IRREVOCABLE CONSENT TO DELIVERY OF NOTICES OR OTHER COMMUNICATIONS BY THE OFFICE OF THE SECRETARY OF STATE TO THE CORPORATION BY ELECTRONIC TRANSMISSION.

(5) Any consent under subsection (4) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

(a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation

in accordance with the consent; and

(b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or other person responsible for the giving of notice or other communications. However, the inadvertent failure to treat the inability as a revocation does not invalidate any meeting or other action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(b) it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under [section 215(4)];

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221], those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal act.

NEW SECTION. **Section 16. Number of shareholders.** (1) For purposes of [sections 1 through 221], the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; and

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of [sections 1 though 221], shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

NEW SECTION. **Section 17. Qualified director.** (1) A qualified director is a director who, at the time action is to be taken under:

(a) [section 28(2)(f)], is not a director:

(i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply; or

(ii) who has a material relationship with any other person to whom the limitation or elimination would apply;

(b) [section 87], does not have:

(i) a material interest in the outcome of the proceeding; or

(ii) a material relationship with a person who has such an interest;

(c) [section 122 or 124]:

(i) is not a party to the proceeding;

(ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or disclaimer is challenged in the proceeding; and

(iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);

(d) [section 131] is not a director:

(i) as to whom the transaction is a director's conflicting interest transaction; or

(ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(e) [section 133] is not a director who:

(i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of another person; or

(ii) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(2) For purposes of this section:

(a) "material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(b) "material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(3) The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(a) nomination or election of the director to the current board by any director who is not a qualified

director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(b) service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director; or

(c) with respect to action to be taken under [section 87], status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

NEW SECTION. **Section 18. Householding.** (1) A corporation has delivered written notice or any other report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(a) the corporation delivers one copy of the notice, report, or statement to the common address;

(b) the corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) is considered to have consented to receiving a single copy at the common address, provided that the notice of intention explains that consent may be revoked and the method for revoking.

NEW SECTION. **Section 19. Definitions -- ratification of defective corporate actions.** In [sections 19 through 26], the following definitions apply:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action

taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization; and

(b) an overissue.

(4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure would render the corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under [section 46] at the time of the issuance; or

(b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series (including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to those shares) that were created or issued as a result of a defective corporate action and that:

(a) but for any failure of authorization would constitute valid shares; or

(b) cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with [sections 1 through 221], including as a result of ratification or validation under [sections 19 through 26].

(8) (a) "Validation effective time", with respect to any defective corporate action ratified under [sections 19 through 26], means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by [section 23] becomes effective in accordance with [section 15]; or

(ii) the time at which any articles of validation filed in accordance with [section 25] become effective.

(b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under [section 26] or otherwise unless ordered by the court.

NEW SECTION. **Section 20. Defective corporate actions.** (1) A defective corporate action is not void or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

(2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive means of ratifying or validating a defective corporate action, and the absence or failure of ratification in accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise or create a presumption that any corporate action is or was a defective corporate action or is void or voidable.

(3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued on:

(a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the authorization, designation, or creation of the shares.

NEW SECTION. **Section 21. Ratification -- defective corporate actions.** (1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

(a) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) that the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) the earlier of the date on which those persons first took action or the date on which they were purported to have been elected as the initial board of directors; and

(c) that the ratification of the election of the person or persons as the initial board of directors is approved.

(3) If any provision of [sections 1 through 221], the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party that is in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with [section 22].

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

NEW SECTION. **Section 22. Action on ratification.** (1) The quorum and voting requirements applicable to a ratifying action by the board of directors under [section 21(1)] are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(2) If the ratification of the defective corporate action requires approval by the shareholders under [section 21(3)] and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose or one of the purposes of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(a) either a copy of the action taken by the board of directors in accordance with [section 21(1)] or the information required by [section 21(1)(a) through (1)(d)]; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative

shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by [section 21(3)] must be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(4) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring ratification exceed the votes cast opposing ratification of the election at a meeting at which a quorum is present.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under [section 21(3)] (and without giving effect to any ratification of putative shares that becomes effective as a result of the vote) are neither entitled to vote nor counted for quorum purposes in a vote to approve the ratification of a defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by [section 21], approval of an amendment to the articles of incorporation under [sections 149 through 160] to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue is also required.

NEW SECTION. **Section 23. Notice requirements.** (1) Unless shareholder approval is required under [section 21(3)], prompt notice of an action taken under [section 21] must be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(a) the date of the action by the board of directors; and

(b) the date the defective corporate action was ratified, provided that notice may not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) either:

(i) a copy of the action taken by the board of directors in accordance with [section 21(1) or (2)]; or

(ii) the information required by [section 21(1)(a) through (1)(d) or (2)(a) through (2)(c)], as applicable; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative

shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under [section 21(3)] if notice is given in accordance with [section 22(2)].

(4) A notice required by this section may be given in any manner permitted by [section 15] and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

NEW SECTION. **Section 24. Effect of ratification.** From and after the validation effective time and without regard to the 120-day period during which a claim may be brought under [section 26]:

(1) each defective corporate action ratified in accordance with [section 21] may not be void or voidable as a result of the failure of authorization identified in the action taken under [section 21(1) or (2)] and is considered a valid corporate action effective as of the date of the defective corporate action;

(2) the issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under [section 21] may not be void or voidable, and such putative share or fraction of a putative share is considered an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) any corporate action taken subsequent to the defective corporate action ratified in accordance with [sections 19 through 26] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action are valid as of the time taken.

NEW SECTION. **Section 25. Filings.** (1) If the defective corporate action ratified under [sections 19 through 26] would have required under any other section of [sections 1 through 221] a filing in accordance with [sections 1 through 221], then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by [sections 1 through 221], the corporation shall file articles of validation in accordance with this section, and the articles of validation serve to amend or substitute for any other filing with respect to the defective corporate action required by [sections 1 through 221].

(2) The articles of validation must set forth:

(a) the defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization in respect of the defective corporate action;

(d) a statement that the defective corporate action was ratified in accordance with [section 21], including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

(e) the information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) if a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(b) if a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(iii) the date and time that the filing is considered to have become effective; or

(c) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under [section 21] would have required a filing under any other section of [sections 1 through 221], the articles of validation must set forth:

(i) a statement that a filing containing all of the information required to be included under the applicable

section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(ii) the date and time that the filing is considered to have become effective.

NEW SECTION. **Section 26. Judicial proceedings -- validity of corporate actions.** (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under [section 21], or any other person claiming to be substantially and adversely affected by a ratification under [section 21], the district court in the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may:

(a) determine the validity and effectiveness of any corporate action or defective corporate action;

(b) determine the validity and effectiveness of any ratification under [section 21];

(c) determine the validity of any putative shares; and

(d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations regarding matters it considers proper under the circumstances.

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days of the validation effective time.

NEW SECTION. **Section 27. Incorporators.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

NEW SECTION. **Section 28. Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 39];

(b) the number of shares the corporation is authorized to issue;

(c) the street and mailing addresses of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iv) a par value for authorized shares or classes of shares; or

(v) the imposition of interest holder liability on shareholders;

(c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law;

(e) a provision permitting or making obligatory indemnification of a director for liability as defined in [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

(i) receipt of a financial benefit to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or its shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law; and

(f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation

the right to have or participate in any or one or more classes or categories of business opportunities before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer:

(i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131]; and

(ii) may be limited by the authorizing action of the board.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 221].

(4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) As used in this section, "related person" has the meaning specified in [section 129].

NEW SECTION. **Section 29. Incorporation.** (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

NEW SECTION. **Section 30. Liability for preincorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly and severally liable for all liabilities created while so acting.

NEW SECTION. **Section 31. Organization of corporation.** (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect initial directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

NEW SECTION. **Section 32. Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(3) The bylaws may contain one or both of the following provisions:

(a) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to the procedures or conditions provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to procedures and conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record date precedes its adoption.

(4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical, and orderly process.

NEW SECTION. **Section 33. Emergency bylaws.** (1) Unless the articles of incorporation provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 34. Forum selection.** (1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be brought in that other court of this state, notwithstanding that the other court of this state is not specified in the provision, and in any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) For the purposes of this section, "internal corporate claim" means:

(a) any claim that is based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity;

(b) any derivative action or proceeding brought on behalf of the corporation;

(c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the articles of incorporation or bylaws; or

(d) any action asserting a claim governed by the internal affairs doctrine that is not included in this subsection (4).

NEW SECTION. **Section 35. Purposes.** (1) Every corporation incorporated under [sections 1 through 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other statute.

NEW SECTION. **Section 36. General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221]

within or outside this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

NEW SECTION. **Section 37. Emergency powers.** (1) In anticipation of or during an emergency as provided in subsection (4), the board of directors of a corporation may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors must be given only to those directors whom it is practicable to reach and may be given in any practicable manner; and

(b) one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 38. Lack of power to act.** (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act;

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) in a proceeding by the attorney general under [section 197].

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

NEW SECTION. **Section 39. Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of similar meaning in another language; and

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 35] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated in this state that is not administratively dissolved. If the corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law of this state;

(c) the name of a foreign corporation registered to do business in this state or an alternate name adopted by a foreign corporation registered to do business in this state because its corporate name is unavailable;

(d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name adopted by a foreign nonprofit corporation registered to do business in this state because its real name is unavailable;

(f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved. If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(g) the name of a foreign unincorporated entity registered to do business in this state or an alternate name adopted by a foreign unincorporated entity registered to do business in this state because its real name is unavailable; and

(h) any assumed business name, trademark, or service mark reserved or registered with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation or unincorporated entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability partnership is incorporated or authorized to transact business in this state and the proposed user corporation, domestic filing entity, or limited liability partnership:

(a) has merged with the other corporation, filing entity, or limited liability partnership;

(b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

(c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing entity, or limited liability partnership; or

(d) has obtained written permission from the other corporation, filing entity, or limited liability partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) [Sections 1 through 221] do not control the use of fictitious names.

NEW SECTION. **Section 40. Reserved name.** (1) A person may reserve the exclusive use of a corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

NEW SECTION. **Section 41. Registered name.** (1) A foreign corporation may register its corporate name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 39(2)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state or country and date of its incorporation, and a brief description of the nature of the business that is to be conducted in this state.

(3) The name is registered for the applicant's exclusive use on the effective date of the application and for the remainder of the calendar year unless renewed.

(4) A foreign corporation whose name registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application that complies with the requirements of subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose name registration is effective may:

(a) register to do business as a foreign corporation under the registered name if it complies with [section 39(1)(b)]; or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic

corporation is incorporated or the foreign corporation registers to do business under that name.

NEW SECTION. **Section 42. Registered office and agent -- domestic and registered foreign corporations.** (1) Each corporation shall continuously maintain in this state~~:~~

~~(a)~~ a registered office~~, which may be the same as any of its places of business~~; and

~~(b)~~ a registered agent~~, which may be:~~

~~(i) an individual who resides in this state and whose business office is identical with the registered office; or~~

~~(ii) a domestic or foreign corporation or eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is registered to do business in this state~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

(2) As used in [sections 42 through 45], "corporation" means both a domestic corporation and a registered foreign corporation.

NEW SECTION. **Section 43. Change -- registered office -- registered agent.** ~~(1)~~ A corporation may change its registered office or registered agent ~~by delivering to the secretary of state for filing a statement of change that sets forth:~~

~~(a) the name of the corporation;~~

~~(b) the street and mailing addresses of its current registered office;~~

~~(c) if the current registered office is to be changed, the street and mailing addresses of the new registered office;~~

~~(d) the name of its current registered agent;~~

~~(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and~~

~~(f) that after the change or changes are made, the street and mailing addresses of its registered office and of the business office of its registered agent will be identical.~~

~~(2) If the street or mailing address of a registered agent's business office changes, the agent shall change the street or mailing address of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and delivering to the secretary of state for filing a signed statement that complies with the requirements of subsection (1) and states~~

~~that the corporation has been notified of the change~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

NEW SECTION. **Section 44. Resignation -- registered agent.** ~~(1)~~ A registered agent may resign as agent for a corporation ~~by delivering to the secretary of state for filing a statement of resignation signed by the agent that states:~~

~~(a) the name of the corporation;~~

~~(b) the name of the agent;~~

~~(c) that the agent resigns from serving as registered agent for the corporation; and~~

~~(d) the address of the corporation to which the agent will deliver the notice required by subsection (3).~~

~~(2) A statement of resignation takes effect on the earlier of:~~

~~(a) 12:01 a.m. on the 31st day after the day on which it is filed by the secretary of state; or~~

~~(b) the designation of a new registered agent for the corporation.~~

~~(3) A registered agent shall promptly deliver to the corporation notice of the date on which a statement of resignation was delivered to the secretary of state for filing.~~

~~(4) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under [sections 1 through 221] for any matter subsequently tendered to it as agent for the corporation. The resignation does not affect any contractual rights the corporation has against the agent or that the agent has against the corporation.~~

~~(5) A registered agent may resign with respect to a corporation regardless of whether the corporation is in good standing~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

NEW SECTION. **Section 45. Service on corporation.** (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid

and correctly addressed.

(3) If process, notice, or demand cannot be served on a corporation pursuant to subsection (1) or (2) or is to be served on a registered foreign corporation that has withdrawn its registration pursuant to [section 209 or 211] or the registration of which has been terminated pursuant to [section 213], then the secretary of state is an agent of the corporation on whom process, notice, or demand may be served. Service of any process, notice, or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection at the earliest of:

(a) the date the corporation receives the process, notice, or demand;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after the process, notice, or demand is deposited in the United States mail by the secretary of state.

(4) This section does not prescribe the only means or necessarily the required means of serving a corporation.

NEW SECTION. **Section 46. Authorized shares.** (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and, before the issuance of shares of a class or series, describe the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

(a) one or more classes or series of shares that together have full voting rights; and

(b) one or more classes or series of shares, which may be the same class, classes, or series as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent otherwise provided by [sections 1 through 221];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or on the occurrence of a specified event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) at prices and in amounts specified or determined in accordance with a formula;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including distributions on the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(6) The description of the preferences, rights, and limitations of classes or series of shares in subsection (3) is not exhaustive.

NEW SECTION. **Section 47. Terms of class or series -- determination by board of directors.** (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(a) classify any unissued shares into one or more classes or into one or more series within a class;

(b) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under [section 46], of:

(a) any class of shares before the issuance of any shares of that class; or

(b) any series within a class before the issuance of any shares of that series.

(3) Before issuing any shares of a class or series created under this section, the corporation shall deliver

to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (2).

NEW SECTION. **Section 48. Issued and outstanding shares.** (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to [section 60].

(3) At all times that shares of the corporation are outstanding, one or more shares that together have full voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

NEW SECTION. **Section 49. Fractional shares.** (1) A corporation may issue fractions of a share or in lieu of doing so may:

(a) pay in cash the value of fractions of a share;

(b) issue scrip in registered or bearer form entitling the holder to receive a full share on surrendering enough scrip to equal a full share; or

(c) arrange for disposition of fractional shares by the holders of those shares.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by [section 55(2)].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition, including that:

(a) the scrip will become void if not exchanged for full shares before a specified date; and

(b) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

NEW SECTION. **Section 50. Subscription for shares -- before incorporation.** (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of cash or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation delivers a written demand for payment to the subscriber.

NEW SECTION. **Section 51. Issuance of shares.** (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders at a meeting at which a

quorum consisting of a majority, or a greater number the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists if:

(i) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and

(ii) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(b) In this subsection (6):

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares is the greater of:

(A) the voting power of the shares to be issued; or

(B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

NEW SECTION. **Section 52. Liability of shareholders.** (1) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except:

(a) to the extent provided in a provision of the articles of incorporation permitted by [section 28(2)(b)(v)]; and

(b) that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

NEW SECTION. **Section 53. Share dividends.** (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issue;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which may not be retroactive. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

NEW SECTION. **Section 54. Share rights -- options -- warrants -- awards.** (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(a) the terms and conditions upon which the rights, options, or warrants are issued; and

(b) the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue the rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(2) The terms and conditions of the rights, options, or warrants may include restrictions or conditions that:

(a) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or

(b) invalidate or void the rights, options, or warrants held by any person or transferee described in subsection (2)(a).

(3) The board of directors may authorize one or more officers to:

(a) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of rights, options, warrants, or other equity compensation awards and the terms of the rights, options, warrants, or awards to be received by the recipients, provided that an officer

may not use this authority to designate the officer or any other person the board of directors may specify as a recipient of those rights, options, warrants, or other equity compensation awards.

NEW SECTION. **Section 55. Certificates -- form -- content.** (1) Shares may be, but need not be, represented by certificates. Unless [sections 1 through 221] or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize:

(a) the preferences, rights, and limitations applicable to each class and series;

(b) any variations in preferences, rights, and limitations among the holders of the same class or series; and

(c) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed by two officers designated in the bylaws.

(5) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

NEW SECTION. **Section 56. Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by [section 55(2) and (3)] and, if applicable, [section 57].

NEW SECTION. **Section 57. Restriction on transfer of shares.** (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation or may impose restrictions on, including the alteration or elimination of, the application of [section 201]. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction described in subsection (1) is valid and enforceable against a shareholder or a transferee of the shareholder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by [section 56(2)]. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction described in subsection (1) is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law; or

(c) for any other reasonable purpose.

(4) A restriction described in subsection (1) may:

(a) obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 58. Preemptive rights -- shareholder.** (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares, except to the extent the articles of incorporation provide that right.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar effect, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A preemptive right may be waived by a shareholder. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for cash.

(d) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 59. Corporation's acquisition of its own shares.** (1) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

NEW SECTION. **Section 60. Distributions to shareholders.** (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7), the effect of a distribution under subsection (3) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(8) This section does not apply to distributions in liquidation under [sections 184 through 202].

NEW SECTION. **Section 61. Annual meeting.** (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted by [section 64], a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors must be elected.

(2) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

NEW SECTION. **Section 62. Special meeting.** (1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or of the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled

to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under [section 63 or 67], the record date for determining shareholders entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on which the demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (1)(b) have been delivered to the corporation.

(3) Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by [section 65(3)] may be conducted at a special meeting of shareholders.

NEW SECTION. **Section 63. Court-ordered meeting.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of one or more shareholders who signed a demand for a special meeting valid under [section 62] if:

(i) notice of the special meeting was not given within 30 days after the first day on which the requisite number of demands was delivered to the corporation; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the shares represented at the meeting constitute a quorum for action on

those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) For purposes of subsection (1)(a), "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 64. Action without meeting.** (1) Action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, be signed by all the shareholders entitled to vote on the action, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) The articles of incorporation may provide that any action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action to be taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to [section 78], directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(3) If not otherwise fixed under [section 67] and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under [section 67] and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent is effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

(4) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described in that manner in any document. Unless the articles of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action have been delivered to the corporation.

(5) If [sections 1 through 221] require that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(6) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(7) The notice requirements in subsections (5) and (6) may not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements does not invalidate actions taken by written consent. However, this subsection may not be considered to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time period.

NEW SECTION. **Section 65. Notice of meeting.** (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to [section 69] for holders of any class or series of shares, the notice to the holders of that class or

series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting if that date is different from the record date for determining shareholders entitled to notice of the meeting. Unless [sections 1 through 221] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(2) Unless [sections 1 through 221] or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [section 63] or [section 67], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 67], however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

NEW SECTION. **Section 66. Waiver of notice.** (1) A shareholder may waive any notice required by [sections 1 through 221] or the articles of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

NEW SECTION. **Section 67. Record date for meeting.** (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders and may not be retroactive.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(5) The record dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

NEW SECTION. **Section 68. Conduct of meeting.** (1) At each meeting of shareholders, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of that provision, by the board of directors.

(2) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

(3) Rules adopted for the meeting and the conduct of the meeting must be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted on. If no announcement is made, the polls are considered to have closed on the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes and no revocations or changes to ballots, proxies, or votes may be accepted.

NEW SECTION. **Section 69. Remote participation -- shareholder's meetings.** (1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes the participation for that class or series. Participation as a shareholder by means of remote communication is subject to guidelines and procedures the board of directors adopts and must be in conformity with subsection (2).

(2) Shareholders participating in a shareholders' meeting by means of remote communication are considered present and may vote at the meeting if the corporation has implemented reasonable measures:

(a) to verify that each person participating remotely as a shareholder is a shareholder; and

(b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

NEW SECTION. **Section 70. Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and, within each voting group, by class or series of shares and must show the address of and number of shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 216(3)], to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or

any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

NEW SECTION. **Section 71. Voting entitlements of shares.** (1) Except as provided in subsections (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(5) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

NEW SECTION. **Section 72. Proxies.** (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; and

(e) a party to a voting agreement created under [section 81].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

NEW SECTION. **Section 73. Shares held by intermediaries and nominees.** (1) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder does not have those rights or privileges.

(2) The procedure must specify:

(a) the types of intermediaries or nominees to which it applies;

(b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;

(c) the manner in which the procedure is selected, which must include that the beneficial ownership certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective;

(f) requirements for notice to the corporation with respect to the arrangement; and

(g) the form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

NEW SECTION. **Section 74. Acceptance of votes -- other instruments.** (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment

does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under [section 79], the inspector of election also may

request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

NEW SECTION. **Section 75. Quorum and voting requirements -- voting groups.** (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

(5) The election of directors is governed by [section 78].

(6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that provision.

NEW SECTION. **Section 76. Action by single and multiple voting groups.** (1) If the articles of incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that matter is taken when it is voted on by that voting group as provided in [section 75].

(2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different times.

NEW SECTION. **Section 77. Modifying quorum or voting requirements.** An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 78. Voting for directors -- cumulative voting.** (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for that right.

(3) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors" or words of similar meaning means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

NEW SECTION. **Section 79. Inspectors of election.** (1) A corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors

in the performance of the duties of inspector under subsection (2) and may rely on information provided by those and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(2) The inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting;

(c) determine the validity of proxy appointments and ballots;

(d) count the votes; and

(e) make a written report of the results.

(3) In performing their duties, the inspectors may examine:

(a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

(b) any envelope or related writing submitted with the proxy appointment forms;

(c) any ballots;

(d) any evidence or other information specified in [section 74]; and

(e) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(4) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (2) specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that the information is relevant and reliable.

(5) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under [section 92] or other judicial proceeding.

NEW SECTION. **Section 80. Voting trusts.** (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the

provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that became effective prior to [the effective date of sections 1 through 221] remains governed by the statute concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

NEW SECTION. **Section 81. Voting agreements.** (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 80].

(2) A voting agreement created under this section is specifically enforceable.

NEW SECTION. **Section 82. Shareholder agreements.** (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in [section 60];

(c) establishes who may be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section is:

(a) as set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement

is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement.

NEW SECTION. **Section 83. Definitions -- derivative proceedings.** In [sections 83 through 90] the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 90], in the right of a foreign corporation.

(2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 84. Standing.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

NEW SECTION. **Section 85. Demand.** A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made on the corporation to take suitable action; and

(2) 90 days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

NEW SECTION. **Section 86. Stay of proceedings.** If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

NEW SECTION. **Section 87. Dismissal.** (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith, after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be made by:

(a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors constitute a quorum.

(3) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either:

(a) that a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(b) that the requirements of subsection (1) have not been met.

(4) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not, the corporation has the burden of proving that the requirements of subsection (1) have been met.

(5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

NEW SECTION. **Section 88. Discontinuance -- settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class or series of shareholders, the court shall direct that notice be given to the shareholders affected.

NEW SECTION. **Section 89. Payment of expenses.** On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper if it finds that the pleading, motion, or other paper:

(a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

NEW SECTION. **Section 90. Applicability to foreign corporations.** In any derivative proceeding in the right of a foreign corporation, the matters covered by [sections 83 through 90] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

NEW SECTION. **Section 91. Shareholder action to appoint custodian or receiver.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(2) The court:

(a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held;

(b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(c) has jurisdiction over the corporation and all of its property, wherever located.

(3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(4) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(a) a custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(b) a receiver:

(i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale if authorized by the court; and

(ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation to be paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 92. Judicial determination -- corporate offices -- review of elections and shareholder votes.** (1) Upon application of or in a proceeding commenced by a person specified in subsection

(2), the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may determine:

(a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(b) the right of an individual to hold the office of director or officer of the corporation;

(c) the result or validity of any vote by the shareholders of the corporation;

(d) the right of a director to membership on a committee of the board of directors; and

(e) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the following persons:

(a) the corporation;

(b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(c) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of the person's right to the office or membership;

(d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of the person's right to the office; and

(e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

(3) In connection with any application or proceeding under subsection (1), the following must be named as defendants unless the person made the application or commenced the proceeding:

(a) the corporation;

(b) any individual whose right to office or membership on a committee of the board of directors is contested;

(c) any individual claiming the office or membership at issue; and

(d) any person claiming a right covered by subsection (1)(e) that is at issue.

(4) In connection with any application or proceeding under subsection (1), service of process may be made on each of the persons specified in subsection (3) by either:

(a) service of process on the corporation addressed to the person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(b) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(5) When service of process is made on a person other than the corporation by service on the corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly provide written notice of the service, together with copies of all process and the application or complaint, to the person at the person's last-known residence or business address or as permitted by statute of this state or by rule of the applicable court.

(6) In connection with any application or proceeding under subsection (1), the court shall dispose of the application or proceeding on an expedited basis and also may:

(a) order additional or further notice the court considers proper under the circumstances;

(b) order that additional persons be joined as parties to the proceeding if the court determines that joinder is necessary for a just adjudication of matters before the court;

(c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or otherwise;

(d) appoint a master to conduct an election or meeting;

(e) enter temporary, preliminary, or permanent injunctive relief;

(f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(g) order any other relief the court determines is equitable, just, and proper.

(7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

(8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court that existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

NEW SECTION. **Section 93. Board of directors -- requirements -- functions.** (1) Except as may be

provided in an agreement authorized under [section 82], each corporation must have a board of directors.

(2) Except as may be provided in an agreement authorized under [section 82] and subject to any limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed by or under the direction of and subject to the oversight of the board of directors.

NEW SECTION. **Section 94. Qualifications of directors.** (1) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(2) A requirement that is based on a past, prospective, or current action or expression of opinion by a nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not a permissible qualification under this section. However, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(3) A director need not be a resident of this state or a shareholder unless the articles of incorporation or bylaws prescribe those requirements.

(4) A qualification for nomination for director prescribed before a person's nomination applies to the person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to the person with respect to the nomination.

(5) A qualification for director prescribed before a director has been elected or appointed applies only at the time an individual becomes a director or during a director's term. A qualification prescribed after a director has been elected or appointed does not apply to that director before the end of that director's term.

NEW SECTION. **Section 95. Directors -- number -- election.** (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or

unless their terms are staggered under [section 98].

NEW SECTION. **Section 96. Election of directors -- certain classes or series of shares.** If the articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes of the election of directors.

NEW SECTION. **Section 97. Terms of directors generally.** (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the extent:

(a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

(b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

NEW SECTION. **Section 98. Staggered terms for directors.** The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group

expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

NEW SECTION. **Section 99. Resignation of directors.** (1) A director may resign at any time by delivering a written notice of resignation to the board of directors or its chair or to the secretary.

(2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

NEW SECTION. **Section 100. Removal of directors by shareholders.** (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number. However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

NEW SECTION. **Section 101. Removal of directors by judicial proceeding.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) considering the director's course of conduct and the inadequacy of other available remedies, removal or other relief would be in the best interests of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

NEW SECTION. **Section 102. Vacancy -- board of directors.** (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

NEW SECTION. **Section 103. Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

NEW SECTION. **Section 104. Meetings.** (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this

means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

NEW SECTION. **Section 105. Action without meeting.** (1) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described in that manner in any document.

NEW SECTION. **Section 106. Notice of meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

NEW SECTION. **Section 107. Waiver of notice.** (1) A director may waive any notice required by [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of

the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

NEW SECTION. **Section 108. Quorum and voting.** (1) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in [sections 1 through 221].

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or transacting business at the meeting;

(b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

NEW SECTION. **Section 109. Committees of board.** (1) Unless [sections 1 through 221], the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

(3) [Sections 104 through 108] apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under [section 93] to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by shareholders;

(c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;

(d) adopt, amend, or repeal bylaws;

(e) approve a plan of merger, including plans not requiring shareholder approval;

(f) authorize or approve reacquisition of shares except according to a formula or method prescribed by the board of directors; or

(g) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

NEW SECTION. **Section 110. Submission of matters for shareholder vote.** A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

NEW SECTION. **Section 111. Standards of conduct for directors.** (1) Each member of the board of directors, when discharging the duties of a director, shall act:

(a) in good faith; and

(b) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a board committee, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a ~~similar~~ LIKE position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(4) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a) or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(5) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) A director is entitled to rely, in accordance with subsection (4) or (5), on:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

NEW SECTION. **Section 112. Standards of liability for directors.** (1) A director may not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(a) no defense interposed by the director precludes liability based on:

(i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];

(ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section 132]; or

(iii) the protection afforded by [section 133]; and

(b) the challenged conduct consisted or was the result of:

(i) action not in good faith; or

(ii) a decision:

(A) that the director did not reasonably believe to be in the best interests of the corporation; or

(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct and:

(A) the relationship, domination, or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) after a reasonable expectation of an effect on the director's judgment has been established, the director may not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for an inquiry; or

(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(2) The party seeking to hold the director liable:

(a) for money damages also has the burden of establishing that:

(i) harm to the corporation or its shareholders has been suffered; and

(ii) the harm suffered was proximately caused by the director's challenged conduct; or

(b) for other money payment under a legal remedy, such as compensation for the unauthorized use of

corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) Nothing in this section:

(a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional interest under [section 130];

(c) affects any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States; or

(d) invalidates or otherwise limits the business judgment rule under the common law.

NEW SECTION. **Section 113. Director's liability for unlawful distributions.** (1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes that when taking the action the director did not comply with [section 111].

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

(a) contribution from every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

(3) A proceeding to enforce:

(a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after the date:

(i) on which the effect of the distribution was measured under [section 60(5) or (7)];

(ii) as of which the violation of [section 60(1)] occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) on which the distribution of assets to shareholders under [section 192(1)] was made; or

(b) contribution or recoupment under subsection (2) is barred unless it is commenced within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

NEW SECTION. **Section 114. Officers.** (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to an officer responsibility for maintaining and authenticating the records of the corporation required to be kept under [section 215(1)].

(4) The same individual may simultaneously hold more than one office in a corporation.

NEW SECTION. **Section 115. Functions of officers.** Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

NEW SECTION. **Section 116. Standards of conduct for officers.** (1) An officer, when performing in an official capacity, has the duty to act:

(a) in good faith;

(b) with the care that a person in a ~~similar~~ LIKE position would reasonably exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation:

(a) to inform the superior officer to whom or the board of directors or the board committee to which the officer reports of information about the affairs of the corporation known to the officer within the scope of the officer's functions and known to the officer to be material to the superior officer, board, or committee; and

(b) to inform the officer's superior officer, another appropriate person within the corporation, or the board

of directors, or a board committee of any actual or probable material violation of law involving the corporation or any material breach of duty to the corporation by an officer, employee, or agent of the corporation that the officer believes has occurred or is likely to occur.

(3) In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(a) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence.

(4) An officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability will depend in each instance on applicable law, including those principles of [section 112] that have relevance.

NEW SECTION. **Section 117. Resignation and removal of officers.** (1) An officer may resign at any time by delivering a written notice to the corporation. A resignation is effective as provided in [section 15(9)] unless the notice provides for delayed effectiveness, including effectiveness determined on a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

(2) An officer may be removed at any time with or without cause by:

(a) the board of directors;

(b) the appointing officer unless the bylaws or the board of directors provides otherwise; or

(c) any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who

appointed the officer resigning or being removed.

NEW SECTION. **Section 118. Contract rights of officers.** (1) The election or appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

NEW SECTION. **Section 119. Definitions -- indemnification and advance for expenses.** For the purposes of [sections 119 through 128], unless the context clearly requires otherwise, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or who, while a director of the corporation, is or was serving at the corporation's request as a director of another entity or trustee of an employee benefit plan. A director is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of a director.

(3) "Liability" means the obligation to pay a judgment, a settlement, a penalty, a fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding, including attorney fees.

(4) "Officer" means an individual who is or was an officer of a corporation or who, while an officer of the corporation, is or was serving at the corporation's request as an officer of another entity or trustee of an employee benefit plan. An officer is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of an officer.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an officer as contemplated in [section 125], the office in a corporation held

by the officer.

(b) The term does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan, or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

NEW SECTION. **Section 120. Permissible indemnification.** (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(a) (i) the director acted in good faith; and

(ii) the director reasonably believed:

(A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(B) in all other cases, that the conduct was at least not opposed to the best interests of the corporation; and

(iii) in the case of a criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful; or

(b) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by [section 28(2)(e)].

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the ~~best~~ interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under [section 123(1)(c)], a corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under

subsection (1); or

(b) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

NEW SECTION. **Section 121. Mandatory indemnification.** A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against expenses incurred by the director in connection with the proceeding.

NEW SECTION. **Section 122. Advance for expenses.** (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a director if the director delivers to the corporation a signed, written undertaking of the director to repay any funds advanced if:

(a) the director is not entitled to mandatory indemnification under [section 121]; and

(b) it is ultimately determined under [section 123] or [section 124] that the director is not entitled to indemnification.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section must be made:

(a) by the board of directors in the following manner:

(i) if there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or

(ii) by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of all the qualified directors; or

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (3)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

NEW SECTION. **Section 123. Court-ordered indemnification and advance for expenses.** (1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable~~:~~

~~(i)~~ to indemnify the director~~;~~ or

~~(ii)~~ to advance expenses to the director even if, IN EITHER CASE, the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c), it may also order the corporation to pay the director's expenses incurred to obtain court-ordered indemnification or advance for expenses.

NEW SECTION. **Section 124. Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under [section 120] unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in [section 120].

(2) The determination must be made:

(a) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of all the qualified directors;

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (2)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(3) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection (2)(b)(ii).

NEW SECTION. **Section 125. Indemnification of officers.** (1) A corporation may indemnify and advance expenses under [sections 119 through 128] to an officer who is a party to a proceeding because the person is an officer:

(a) to the same extent as a director; and

(b) if the person is an officer but not a director, to any further extent provided by the articles of incorporation or the bylaws or by a resolution adopted or a contract approved by the board of directors or shareholders, except for:

(i) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) liability arising out of conduct that constitutes:

(A) receipt by the officer of a financial benefit to which the officer is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders; or

(C) an intentional violation of criminal law.

(2) Subsection (1)(b) applies to an officer who is also a director if the officer is made a party to the proceeding based on an act or omission solely as an officer.

(3) An officer who is not a director is entitled to mandatory indemnification under [section 121] and may

apply to a court under [section 123] for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections.

NEW SECTION. **Section 126. Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation or a joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under [sections 119 through 128].

NEW SECTION. **Section 127. Variation by corporate action -- application.** (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with [section 120] or advance funds to pay for or reimburse expenses in accordance with [section 122]. An obligatory provision under this section satisfies the requirements for authorization referred to in [section 122(3)] and [section 124(3)]. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with [section 122] to the fullest extent permitted by law unless the provision expressly provides otherwise.

(2) A right of indemnification or to advances for expenses created by [sections 119 through 128] or under subsection (1) of this section and in effect at the time of an act or omission may not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders adopted after the occurrence of the act or omission unless, in the case of a right created under subsection (1), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision pursuant to subsection (1) may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise expressly provided. A provision for indemnification or advance for expenses in the articles of incorporation or bylaws or a resolution of the board of directors or shareholders of a predecessor of the

corporation in a merger or in a contract to which the predecessor is a party that exists at the time the merger takes effect is governed by [section 167(1)(d)].

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to [sections 119 through 128].

(5) [Sections 119 through 128] do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when the director or officer is not a party.

(6) [Sections 119 through 128] do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

NEW SECTION. **Section 128. Exclusivity.** A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by [sections 119 through 128].

NEW SECTION. **Section 129. Definitions -- director's conflicting interest transactions.** For the purposes of [sections 129 through 132], unless otherwise specified, the following definitions apply:

(1) "Control" or "controlled by" means:

(a) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(b) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(a) to which, at the relevant time, the director is a party;

(b) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(c) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of [section 130(2)(c)], that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(a) fair in terms of the director's dealings with the corporation; and

(b) comparable to what might have been obtainable in an arm's-length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(a) an individual's spouse;

(b) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of an individual or of an individual's spouse;

(c) a natural person living in the same home as an individual;

(d) an entity, other than the corporation or an entity controlled by the corporation, controlled by an individual or any person specified in subsections (5)(a) through (5)(c);

(e) a domestic or foreign:

(A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which an individual is a director;

(B) unincorporated entity of which an individual is a general partner or a member of the governing body; or

(C) individual, trust, or estate for whom or of which an individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) a person that is or an entity that is controlled by an employer of an individual.

(6) "Relevant time" means:

(a) the time at which directors' action respecting the transaction is taken in compliance with [section 131]; or

(b) if the transaction is not brought before the board of directors or a committee for action under [section 131], the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(a) the existence and nature of the director's conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that a director free of

that conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

NEW SECTION. **Section 130. Judicial action.** (1) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(2) A director's conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the grounds that the director has an interest respecting the transaction if:

(a) directors' action respecting the transaction was taken in compliance with [section 131] at any time;

(b) shareholders' action respecting the transaction was taken in compliance with [section 132] at any time; or

(c) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

NEW SECTION. **Section 131. Directors' action.** (1) Directors' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(a)] if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by the qualified directors or after modified disclosure in compliance with subsection (2), provided that:

(a) the qualified directors have deliberated and voted outside the presence of and without participation by any other director; and

(b) if the action has been taken by a board committee, all members of the committee were qualified directors and either:

(i) the committee was composed of all the qualified directors on the board of directors; or

(ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(2) Notwithstanding subsection (1), when a transaction is a director's conflicting interest transaction only because a related person of the director is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(a) all information required to be disclosed that is not violative of the duty, obligation, or rule;

(b) the existence and nature of the director's conflicting interest; and

(c) the nature of the conflicted director's duty not to disclose the confidential information.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the board committee constitutes a quorum for purposes of action that complies with this section.

(4) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a board committee, in which directors who are not qualified directors may participate.

NEW SECTION. **Section 132. Shareholders' action.** (1) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(b)] if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(a) notice to shareholders describing the action to be taken respecting the transaction;

(b) provision to the corporation of the information referred to in subsection (2); and

(c) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote must be determined as of the record date for notice of the meeting.

(2) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (3), and of the identity of the holders of those shares.

(3) For purposes of this section:

(a) "holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder,

and an unrestricted voting trust beneficial owner; and

(b) "qualified shares" means all shares entitled to be voted with respect to the transaction except shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows or under subsection (2) is informed are held by:

(i) a director who has a conflicting interest respecting the transaction; or

(ii) a related person of the director, excluding a person described in [section 129(5)(f)].

(4) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (5), shareholders' action that otherwise complies with this section is not affected by the presence of holders of or by the voting of shares that are not qualified shares.

(5) If a shareholders' vote does not comply with subsection (1) solely because of a director's failure to comply with subsection (2) and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take any action respecting the transaction and the director, and may give any effect to the shareholders' vote, that the court considers appropriate in the circumstances.

(6) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which shares that are not qualified shares may participate.

NEW SECTION. **Section 133. Business opportunities.** (1) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(a) before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 131]; or

(ii) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance

with the procedures set forth in [section 132], in either case as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in [section 129], the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(b) the duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and, if required, made effective by action of qualified directors in accordance with [section 28(2)(f)].

(2) In any proceeding seeking equitable relief or other remedies based on an alleged improper pursuit or taking advantage of a business opportunity by a director or officer directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (1)(a)(ii) before pursuing or taking advantage of the opportunity does not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

NEW SECTION. **Section 134. Definitions -- domestication -- conversion.** As used in [sections 134 through 148] the following definitions apply:

(1) "Conversion" means a transaction pursuant to [sections 143 through 148].

(2) "Converted entity" means the converting entity as it continues in existence after a conversion.

(3) "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion pursuant to [section 145] or the foreign eligible entity that approves a conversion pursuant to the organic law of the eligible entity.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to [section 139] or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(6) "Domestication" means a transaction pursuant to [sections 138 through 142].

(7) "Protected agreement" means:

(a) a document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before the enactment date;

(b) an agreement that is binding on a domestic corporation or eligible entity immediately before the enactment date;

(c) the articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before the enactment date; or

(d) an agreement that is binding on any of the shareholders, members, interest holders, directors, or other governors of a domestic corporation or eligible entity, in their official capacities, immediately before the enactment date. For purposes of [sections 138 and 143] and this subsection (7), "enactment date" means the earliest date on which the laws of this state authorized a transaction having the effect of a domestication or a conversion, as applicable.

NEW SECTION. **Section 135. Excluded transactions.** (1) [Sections 134 through 148] may not be used to effect a transaction that:

(a) converts or domesticates a company organized on the mutual principle to one organized on the basis of share ownership;

(b) converts or domesticates banks and trust companies regulated under Title 32, chapter 1;

(c) converts or domesticates building and loan associations regulated under Title 32, chapter 2;

(d) converts or domesticates credit unions regulated under Title 32, chapter 3; or

(e) converts or domesticates insurance companies regulated under Title 33.

(2) The conversion of a domestic corporation to a domestic benefit corporation is governed by Title 35, chapter 1, part 14, and not by [sections 134 through 148].

NEW SECTION. **Section 136. Required approvals.** If a domestic or foreign corporation or eligible entity may not be a party to a merger without the approval of the attorney general, the state auditor, the department of administration, or the public service commission and the applicable statutes or regulations do not specifically deal with transactions under [sections 134 through 148] but do require approval by one of those agencies or officials for mergers, a corporation or eligible entity may not be a party to a transaction under [sections 134 through 148] without the prior approval of that agency or official.

NEW SECTION. **Section 137. Relationship to other laws.** A transaction effected under [sections 134 through 148] does not create or impair a right, duty, or obligation of a person under the laws of this state other

than [sections 134 through 148] relating to a change in control, business combination, control-share acquisition, or a similar transaction involving a domesticating or converting domestic corporation unless the approval of the plan of domestication or conversion is by a vote of the shareholders or the board of directors that would be sufficient to create or impair the right, duty, or obligation directly under that law.

NEW SECTION. **Section 138. Domestication.** (1) By complying with the provisions of [sections 138 through 142] applicable to foreign corporations, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of [sections 138 through 142], a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) The plan of domestication must include:

(a) the name of the domesticating corporation;

(b) the name and jurisdiction of formation of the domesticated corporation;

(c) the manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination;

(d) the proposed articles of incorporation and bylaws of the domesticated corporation; and

(e) the other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) If a protected agreement of a domestic domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 139. Action on plan of domestication.** In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication must be adopted in the following manner:

(1) The plan of domestication must first be adopted by the board of directors.

(2) (a) The plan of domestication must then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of domestication by the shareholders or for the effectiveness of the plan of domestication.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of domestication requires the approval of a majority of the votes entitled to be cast on the plan and, except as provided in subsection (6), the approval of a majority of the votes entitled to be cast on the plan by any class or series of shares entitled to vote as a separate group on the plan. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights in subsection (5) of any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under [section 152] if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation

would become subject to interest holder liability, approval of the plan of domestication must require the signing in connection with the domestication, by each affected shareholder, of a separate written consent to become subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce that interest holder liability.

NEW SECTION. **Section 140. Articles of domestication -- effectiveness.** (1) After:

(a) a plan of domestication of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a foreign corporation that is a domesticating corporation has approved a domestication as required under its organic law, articles of domestication must be signed by the domesticating corporation. The articles must set forth:

(i) the name of the domesticating corporation and its jurisdiction of formation;

(ii) the name of the domesticated corporation and its jurisdiction of formation; and

(iii) if the domesticating corporation is:

(A) a domestic corporation, a statement that the plan of domestication was approved in accordance with [sections 134 through 148]; or

(B) a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(2) If the domesticated corporation is a domestic corporation, the articles of domestication must have attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28]. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(3) The articles of domestication must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the domestication becomes effective on the later of:

(a) the date and time provided by the organic law of the domesticated corporation; or

(b) the date the articles of domestication are effective.

(5) If the domesticating corporation is a foreign corporation that is registered to do business in this state under [sections 203 through 214], its registration statement is canceled automatically when the domestication becomes effective.

NEW SECTION. **Section 141. Amendment of plan of domestication -- abandonment.** (1) A plan of domestication of a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination to be received by any of the shareholders of the domesticating corporation under the plan;

(ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective except changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in the plan; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the secretary of state for filing but before the articles of domestication have become effective, articles of abandonment signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the domesticating corporation;

(b) the date on which the articles of domestication were filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

NEW SECTION. **Section 142. Effect of domestication.** (1) When a domestication becomes effective:

(a) all property owned by and every contract right possessed by the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and liabilities of the domesticated corporation;

(c) the name of the domesticated corporation may be but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) the articles of incorporation and bylaws of the domesticated corporation become effective;

(e) the shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) the domesticated corporation is:

(i) incorporated under and subject to the organic law of the domesticated corporation;

(ii) the same corporation without interruption as the domesticating corporation; and

(iii) considered to have been incorporated on the date the domesticating corporation was originally incorporated.

(2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability with respect to the domesticating corporation before the domestication becomes

effective is as follows:

(a) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(b) The provisions of the organic law of the domesticating corporation continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(4) A shareholder who becomes subject to interest holder liability with respect to the domesticated corporation as a result of the domestication has that interest holder liability only with respect to interest holder liabilities that arise after the domestication becomes effective.

(5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

NEW SECTION. **Section 143. Conversion.** (1) By complying with [sections 143 through 148], a domestic corporation may become:

(a) a domestic eligible entity; or

(b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

(2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic

eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through 148]. For purposes of applying [sections 143 through 148]:

(a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a business corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting corporation in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 144. Plan of conversion.** (1) A domestic corporation may convert to a domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan of conversion must include:

(a) the name of the converting corporation;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination;

(d) the other terms and conditions of the conversion; and

(e) the full text that will be in effect immediately after the conversion becomes effective of the organic rules of the converted entity, which must be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

NEW SECTION. **Section 145. Action on plan of conversion.** In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors.

(2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or for the effectiveness of the plan of conversion.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in writing as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the

plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the interest holder liability.

NEW SECTION. **Section 146. Articles of conversion -- effectiveness.** (1) After:

(a) a plan of conversion of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, articles of conversion must be signed by the converting entity and must:

(i) state the name, jurisdiction of formation, and type of entity of the converting entity;

(ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

(iii) if the converting entity is:

(A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections 143 through 148]; or

(B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with its organic law; or

(II) a domestic eligible entity the organic law of which does not provide for approval of the conversion, state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through 148]; and

(iv) if the converted entity is:

(A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached the public organic record of the converted entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

(B) a domestic limited liability partnership, have attached the filing required to become a limited liability partnership.

(2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of [section 28], except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that the public organic record does not need to be signed.

(3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the conversion itself becomes effective on the later of:

(a) the date and time provided by the organic law of that eligible entity; or

(b) the date the articles of conversion become effective.

(5) Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing satisfies the requirements of both the other organic law and this section.

(6) If the converting entity is a foreign eligible entity that is registered to do business in this state under a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign qualification is canceled automatically on the effective date of its conversion.

NEW SECTION. **Section 147. Amendment of plan of conversion -- abandonment.** (1) A plan of conversion of a converting entity that is a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination to be received by any of the shareholders of the converting corporation under the plan;

(ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes effective except changes that do not require approval of the eligible interest holders of the converted entity under

its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in any material respect.

(2) After a plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by [sections 143 through 148] and before the articles of conversion become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of state for filing and before the articles of conversion become effective, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the converting entity;

(b) the date on which the articles of conversion were filed by the secretary of state; and

(c) a statement that the conversion has been abandoned in accordance with this section.

NEW SECTION. **Section 148. Effect of conversion.** (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting entity remain the property and contract rights of the converted entity without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and other liabilities of the converted entity;

(c) the name of the converted entity may be but need not be substituted for the name of the converting entity in any pending action or proceeding;

(d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) if the converted entity is a nonfiling entity, its private organic rules become effective;

(f) if the converted entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests

or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity; and

(h) the converted entity is:

(i) incorporated or organized under and subject to the organic law of the converted entity;

(ii) the same entity without interruption as the converting entity; and

(iii) considered to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability with respect to that converting eligible entity before the conversion becomes effective is as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(c) The eligible interest holder has the rights of contribution from other persons that are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as

if the conversion had not occurred.

(d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

(5) A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after the conversion inures to the converted entity.

(8) A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

NEW SECTION. **Section 149. Authority to amend.** (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

NEW SECTION. **Section 150. Amendment before issuance of shares.** If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

NEW SECTION. **Section 151. Amendment by board of directors and shareholders.** If a corporation has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

(1) The proposed amendment must first be adopted by the board of directors.

(2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or for the effectiveness of the amendment.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability, the terms and conditions of the new interest holder liability:

(a) are substantially identical to those of the existing interest holder liability; or

(b) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce that interest holder liability.

(7) For purposes of [section 157] and subsection (6) of this section, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if:

(a) the person did not have interest holder liability before the amendment becomes effective; or

(b) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

NEW SECTION. **Section 152. Voting on amendments by voting groups.** (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment would:

(a) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(c) change the rights, preferences, or limitations of all or part of the shares of the class;

(d) change the shares of all or part of the class into a different number of shares of the same class;

(e) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(g) limit or deny an existing preemptive right of all or part of the shares of the class; or

(h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a

single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to [section 151(3)].

(4) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

NEW SECTION. **Section 153. Amendment by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) if the corporation has only one class of shares outstanding:

(a) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) to delete a class of shares from the articles of incorporation as a result of the operation of [section 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder approval.

NEW SECTION. **Section 154. Articles of amendment.** (1) After an amendment to the articles of incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

(a) the name of the corporation;

(b) the text of each amendment adopted or the information required by [section 3(11)(e)];

(c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section 3(11)(e)];

(d) the date of each amendment's adoption; and

(e) if an amendment:

(i) was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval was not required;

(ii) required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

(iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

(2) Articles of amendment take effect on the effective date determined in accordance with [section 6].

NEW SECTION. **Section 155. Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(2) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in [section 151].

(3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) a statement that the restated articles consolidate all amendments into a single document; and

(d) if a new amendment is included in the restated articles, the statements required under [section 154] with respect to the new amendment.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(5) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the statements required by subsection (3)(d).

NEW SECTION. **Section 156. Amendment pursuant to reorganization.** (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

NEW SECTION. **Section 157. Effect of amendment.** (1) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability with respect to the corporation as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect to interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder

liability of a shareholder who had interest holder liability with respect to the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the articles of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

NEW SECTION. **Section 158. Authority to amend.** (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power exclusively to the shareholders in whole or part; or

(b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(3) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

NEW SECTION. **Section 159. Bylaw increasing quorum or voting requirement for directors.** (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise; or

(b) if adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the

shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 160. Bylaw provisions relating to election of directors.** (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the votes;

(b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the date that is the earlier of:

(i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

(ii) the date on which an individual is selected by the board of directors to fill the office held by the director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

(iii) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by

shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise;

(b) if adopted by the board of directors, by the board of directors or the shareholders.

NEW SECTION. **Section 161. Definitions -- mergers and share exchanges.** As used in [sections 161 through 168], the following definitions apply:

(1) "Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

(3) "New interest holder liability" means interest holder liability of a person resulting from a merger or share exchange that is:

(a) with respect to an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or

(b) with respect to the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:

(i) the person did not have interest holder liability immediately before the merger or share exchange became effective; or

(ii) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(5) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one or more other corporations or eligible entities are merged.

NEW SECTION. **Section 162. Merger.** (1) By complying with [sections 161 through 168]:

(a) one or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

(b) two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

(2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity, and the merger may then be effected as provided in the other provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

(a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of merger must include:

(a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

(b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property, or any combination;

(e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record; and

(f) any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic rules of the party.

(5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(7) A plan of merger may be amended only with the consent of each party to the merger except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger;

(ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic or foreign nonprofit corporation, or unincorporated entity; or

(iii) any other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 163. Share exchange.** (1) By complying with [sections 161 through 168]:

(a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange; or

(b) all of the shares of one or more classes or series of shares of a domestic corporation may be

acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange.

(2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that corporation or other entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes of applying [sections 161 through 168]:

(a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of share exchange must include:

(a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests;

(b) the terms and conditions of the share exchange;

(c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; and

(d) any other provisions required by the organic law governing the acquired entity or its articles of incorporation or organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable

outside the plan in accordance with [section 3(11)].

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired entity; or

(ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 164. Action on plan of merger or share exchange.** In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be adopted in the following manner:

(1) The plan of merger or share exchange must first be adopted by the board of directors.

(2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their shares to the offeror in response to the offer unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or for the effectiveness of the plan of merger or share exchange.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or eligible entity.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) Subject to subsection (7), separate voting by voting groups is required:

(a) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; or

(ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under [section 152];

(b) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share exchange:

(a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

(b) will not effect a substantive business combination.

(8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) the corporation will survive the merger;

(b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

(c) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the effective date of the merger; and

(d) the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under [section 51(6)].

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domestic corporation:

(a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and

(b) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

(10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of merger or share exchange is not required if:

(a) the plan of merger or share exchange expressly:

(i) permits or requires the merger or share exchange to be effected under this subsection (10); and

(ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f);

(b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

(c) the offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subsection (10)(h);

(d) the offer remains open for at least 10 days;

(e) the offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) the following shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168] and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) shares purchased by the offeror in accordance with the offer;

(ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of them; and

(iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible interests in the offeror, parent, or subsidiary;

(g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to

be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration described in this subsection (10)(h).

(11) As used in subsection (10):

(a) "offer" means the offer referred to in subsection (10)(b);

(b) "offeror" means the person making the offer;

(c) "parent" of an entity means a person that owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(d) shares tendered in response to the offer are considered to have been "purchased" in accordance with the offer at the earliest time that:

(i) the offeror has irrevocably accepted those shares for payment; and

(ii) either:

(A) in the case of shares represented by certificates, the offeror or the offeror's designated depository or other agent has physically received the certificates representing those shares; or

(B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "wholly owned subsidiary" of a person means an entity of which or in which that person owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(12) Unless the articles of incorporation provide otherwise:

(a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

NEW SECTION. **Section 165. Merger between parent and subsidiary or between subsidiaries.** (1) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

(a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power

of each class and series of the outstanding shares or eligible interests that have voting power; or

(b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary.

(2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary's shareholders that the merger has become effective. The notice must include:

(a) a copy of the plan of merger; or

(b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be furnished, upon request and at no cost, to any shareholder of any party to the merger.

(3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers generally.

NEW SECTION. **Section 166. Articles of merger or share exchange.** (1) After a plan of merger has been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)]. The articles must set forth:

(a) the name, jurisdiction of formation, and type of entity of each party to the merger;

(b) the name, jurisdiction of formation, and type of entity of the survivor;

(c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended or if a new domestic corporation is created as a result of the merger:

(i) the amendments to the survivor's articles of incorporation; or

(ii) the articles of incorporation of the new corporation;

(d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or if a new domestic eligible entity is created as a result of the merger:

(i) the amendments to the public organic record of the survivor; or

(ii) the public organic record of the new eligible entity;

(e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and the articles of incorporation;

(f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) as to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized as required by its organic law;

(h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or [section 162(3)]; and

(i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required to become a limited liability partnership, as an attachment.

(2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be signed by the acquired entity and the acquiring entity. The articles must set forth:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible entity that is the acquiring entity; and

(c) a statement that the plan of share exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of shares or eligible interests included in the exchange; and

(ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section 163(3)].

(3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5), the merger or share exchange takes effect on the effective date determined in accordance with [section 6].

(5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created by the merger is the survivor, the merger itself becomes effective on the later of:

(a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become effective; or

(b) the date the articles of merger take effect.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both that organic law and this section.

NEW SECTION. **Section 167. Effect of merger or share exchange.** (1) When a merger becomes effective:

(a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases;

(c) all property owned by and every contract right possessed by each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

(e) the name of the survivor may be but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger;

(g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective;

(h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are converted, and the former holders

of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign corporation;

(i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor; and

(j) if the survivor exists before the merger:

(i) all the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

(ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

(iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under the organic law governing the acquired entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability with respect to an entity as a result of a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of the party or acquired entity:

(i) that were exchanged in the merger or share exchange;

(ii) that were cancelled in the merger; or

(iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, the following provisions apply:

(A) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(B) The provisions of the organic law governing any entity for which the person had that prior interest holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(C) The person has the rights of contribution from other persons that are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(D) The person may not by reason of that prior interest holder liability have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on that interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of the merger is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under [sections 171 through 183].

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the laws of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred

except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

NEW SECTION. **Section 168. Abandonment of merger or share exchange.** (1) After a plan of merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business corporation that is a party to the plan without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment signed by all the parties that signed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

(c) a statement that the merger or share exchange has been abandoned in accordance with this section.

NEW SECTION. **Section 169. Disposition of assets not requiring shareholder approval.** No approval of the shareholders is required, unless the articles of incorporation provide otherwise:

(1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or

otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course of business;

(3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

NEW SECTION. **Section 170. Shareholder approval of certain dispositions.** (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation is conclusively held to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least:

(a) 25% of total assets at the end of the most recently completed fiscal year; and

(b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing operations, in each case for the most recently completed fiscal year.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval by the shareholders of a disposition or for the effectiveness of the disposition.

(4) If a disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must

state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this section.

NEW SECTION. **Section 171. Definitions -- appraisal rights.** For the purposes of [sections 171 through 183], the following definitions apply:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive of another person. For purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

(2) "Beneficial owner" means any person who directly, or indirectly through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares. However, a member of a national securities exchange is not considered a beneficial owner of securities held directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed is held to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation that are

beneficially owned by any member of the group.

(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

(4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(5) "Fair value" means the value of the corporation's shares determined:

(a) immediately before the effectiveness of the corporate action to which the shareholder objects;

(b) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to [section 172(1)(d)].

(6) "Interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) "Interested person" means a person or an affiliate of a person who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

(a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(c) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders, other than:

(i) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section 131]; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director or

governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

(8) "Interested transaction" means a corporate action described in [section 172(1)], other than a merger pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

NEW SECTION. **Section 172. Right to appraisal.** (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 164] or would be required but for the provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) the corporation is a subsidiary and the merger is governed by [section 165];

(b) consummation of a share exchange to which the corporation is a party the shares of which will be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series if:

(i) under the terms of the corporate action approved by the shareholders, the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are to be distributed to shareholders in cash:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of distribution; and

(ii) the disposition of assets is not an interested transaction;

(d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share created;

(e) any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of the board of directors;

(f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication;

(g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143]; or

(h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 143].

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;

(ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more than 10% of those shares; or

(iii) issued by an open-end management investment company registered with the United States securities and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) must be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant

to [section 164(10)], the date of the offer; or

(ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for the holders of any class or series of shares:

(i) who are required by the terms of the corporate action requiring appraisal rights to accept for those shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the corporate action becomes effective; or

(ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189 and 190]:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of the distribution.

(d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) no limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143] or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

(b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within 1 year after the effective date of the amendment if the action would

otherwise afford appraisal rights.

NEW SECTION. **Section 173. Assertion of rights -- nominees -- beneficial shareholders.** (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(a) submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in [section 176(2)(b)(ii)]; and

(b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

NEW SECTION. **Section 174. Notice of appraisal rights.** (1) When any corporate action specified in [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in [section 176].

(3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the

shareholders pursuant to [section 64]:

(a) written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of [sections 171 through 183]; and

(b) written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of [sections 171 through 183].

(4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (2) must be accompanied by:

(a) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of the notice, an income statement for that year, and a cash flow statement for that year, provided that if those financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) the latest interim financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action.

NEW SECTION. **Section 175. Notice of intent to demand payment -- consequences of voting or consenting.** (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the proposed action.

(2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor

of the proposed action with respect to that class or series of shares.

(3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not tender or cause or permit to be tendered any shares of that class or series in response to the offer.

(4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 176. Appraisal notice and form.** (1) If a corporate action requiring appraisal rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2), or (3)]. In the case of a merger under [section 165], the parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be delivered no earlier than the date the corporate action specified in [section 172(1)] became effective and no later than 10 days after that date and must:

(a) supply a form that:

(i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action; and

(ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;

(b) state:

(i) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which may not be earlier than the date by which the corporation must receive the required form under subsection (2)(b)(ii);

(ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than

60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under [section 177] must be received, which must be within 20 days after the date specified in subsection (2)(b)(ii) of this section; and

(c) be accompanied by a copy of [sections 171 through 183].

NEW SECTION. **Section 177. Perfection of rights -- right to withdraw.** (1) A shareholder who receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)]. In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to [section 176(2)(b)(v). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in [section 176(2)], is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 178. Payment.** (1) Except as provided in [section 179], within 30 days after

the form required by [section 176(2)(b)(ii)] is due, the corporation shall pay in cash to those shareholders who complied with [section 177(1)] the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) must be accompanied by:

(a) (i) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year or, if those annual financial statements are not reasonably available, reasonably equivalent financial information; and

(ii) the latest interim financial statements of the corporation, if any;

(b) a statement of the corporation's estimate of the fair value of the shares, which must equal or exceed the corporation's estimate given pursuant to [section 176(2)(b)(iii)]; and

(c) a statement that shareholders described in subsection (1) of this section have the right to demand further payment under [section 180] and that if any shareholder does not do so within the time period specified in [section 180(2)], the shareholder is considered to have accepted the payment under subsection (1) of this section in full satisfaction of the corporation's obligations under [sections 171 through 183].

NEW SECTION. **Section 179. After-acquired shares.** (1) A corporation may elect to withhold payment required by [section 178] from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to [section 176(2)(a)].

(2) If the corporation elected to withhold payment under subsection (1) of this section, it shall, within 30 days after the form required by [section 176(2)(b)(ii)] is due, notify all shareholders who are described in subsection (1) of this section:

(a) of the information required by [section 178(2)(a)];

(b) of the corporation's estimate of fair value pursuant to [section 178(2)(b)];

(c) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under [section 180];

(d) that those shareholders who wish to accept the offer shall notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(e) that those shareholders who do not satisfy the requirements for demanding appraisal under [section

180] are considered to have accepted the corporation's offer.

(3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in subsection (2)(e).

NEW SECTION. **Section 180. Procedure if shareholder dissatisfied with payment or offer.** (1) A shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179] who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

NEW SECTION. **Section 181. Judicial appraisal of shares -- court action.** (1) If a shareholder makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180], plus interest.

(2) The corporation shall commence the proceeding in the district court of the county in which its principal office is located or, if its principal office is not located in this state, in the first judicial district.

(3) The corporation shall make all shareholders, regardless of whether they are residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties

must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for the shares, plus interest; or

(b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under [section 179].

NEW SECTION. **Section 182. Court costs -- expenses.** (1) The court in an appraisal proceeding commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(2) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

(b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180], any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit.

NEW SECTION. **Section 183. Other remedies limited.** (1) The legality of a proposed or completed corporate action described in [section 172(1)] may not be contested, and the corporate action may not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) does not apply to a corporate action that:

(a) was not authorized and approved in accordance with the applicable provisions of:

(i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169 and 170];

(ii) the articles of incorporation or bylaws; or

(iii) the resolution of the board of directors authorizing the corporate action;

(b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) is an interested transaction unless it has been recommended by the board of directors in the manner provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as if the interested transaction were a director's conflicting interest transaction; or

(d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

NEW SECTION. **Section 184. Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(i) that none of the corporation's shares has been issued; or

(ii) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

NEW SECTION. **Section 185. Dissolution by board of directors and shareholders.** (1) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution unless:

(i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum

for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

NEW SECTION. **Section 186. Articles of dissolution.** (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date that dissolution was authorized; and

(c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(2) The articles of dissolution take effect on the effective date determined in accordance with [section 6]. A corporation is dissolved on the effective date of its articles of dissolution.

(3) For purposes of [sections 184 through 192], "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

NEW SECTION. **Section 187. Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days after its effective date.

(2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a

statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(g) The articles of revocation of dissolution take effect on the effective date determined in accordance with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.

(h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

NEW SECTION. **Section 188. Effect of dissolution.** (1) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) making distributions of its remaining assets among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities;

(c) subject its directors or officers to standards of conduct different from those prescribed in [sections 93 through 133];

(d) change:

(i) quorum or voting requirements for its board of directors or shareholders;

(ii) provisions for selection, resignation, or removal of its directors or officers or both; or

(iii) provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of

dissolution; or

(g) terminate the authority of the registered agent of the corporation.

(3) A distribution in liquidation under this section may be made only by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

NEW SECTION. **Section 189. Known claims against dissolved corporation.** (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

NEW SECTION. **Section 190. Other claims against dissolved corporations.** (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) be:

(i) published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located; or

(ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation's website;

(b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the first publication date of the notice:

(a) a claimant who was not given written notice under [section 189];

(b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

NEW SECTION. **Section 191. Court proceedings.** (1) A dissolved corporation that has published a notice under [section 190] may file an application with the district court of the county where its principal office is located or, if its principal office is not located in this state, of the first judicial district for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [section 190(3)].

(2) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and those claims may not be enforced against a shareholder who received assets in liquidation.

NEW SECTION. **Section 192. Director duties.** (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment of or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191] may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are barred or satisfied under [sections 189 through 191].

NEW SECTION. **Section 193. Grounds for administrative dissolution.** The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, ~~taxes,~~ interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

NEW SECTION. **Section 194. Procedure for and effect of administrative dissolution.** (1) ~~If the secretary of state determines that~~ ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL COMPILE A LIST OF CORPORATIONS FOR WHICH one or more grounds exist under [section 193] for dissolving a corporation, AND the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

NEW SECTION. **Section 195. Reinstatement following administrative dissolution.** (1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated; AND

(c) state that the corporation's name satisfies the requirements of [section 39]~~; and~~

~~(d) contain a certificate from the department of revenue reciting that all taxes imposed pursuant to Title 15 have been paid~~.

(2) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION FOR REINSTATEMENT:

(A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE

15 HAVE BEEN PAID;

(B) A FILING FEE, WHICH MUST BE SET AND DEPOSITED BY THE SECRETARY OF STATE IN ACCORDANCE WITH 2-15-405; AND

(C) ALL ANNUAL REPORTS NOT YET FILED WITH THE SECRETARY OF STATE AND RELATED FEES AND PENALTIES.

~~(2)~~(3) If the secretary of state determines that the application contains the information, DOCUMENTS, AND FEES required by ~~subsection (1)~~ SUBSECTIONS (1) AND (2) and that the information ~~is~~, DOCUMENTS, AND FEES ARE COMPLETE AND correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

~~(3)~~(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

NEW SECTION. **Section 196. Appeal from denial of reinstatement.** (1) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under [section 45] with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 197. Grounds for judicial dissolution.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of the shares.

(3) For the purposes of this section:

(a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) the term "shareholder" in subsection (2) means a record shareholder, a beneficial shareholder, and

a voting trust beneficial owner.

NEW SECTION. **Section 198. Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under [section 201] and accompanied by a copy of [section 201].

NEW SECTION. **Section 199. Receivership or custodianship.** (1) Unless an election to purchase has been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) the receiver:

(A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private

sale; and

(B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state;

(ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(b) The receiver or custodian has other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

NEW SECTION. **Section 200. Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 197] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance with [sections 189 and 190].

NEW SECTION. **Section 201. Election to purchase in lieu of dissolution.** (1) Unless the transfer is altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow.

If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and number of shares owned by the petitioner and the name of and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares on the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or another date the court finds appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase on terms and conditions the court finds appropriate, which may include payment of the purchase price in installments when necessary in the interests of equity, provision for security to ensure payment of the purchase price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes or series as far as practicable and may direct that holders of a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning

shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the order becomes final.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

NEW SECTION. **Section 202. Deposit with state treasurer.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person or the person's representative that amount.

NEW SECTION. **Section 203. Foreign corporations -- governing law.** (1) The law of the jurisdiction of formation of a foreign corporation governs:

(a) the internal affairs of the foreign corporation; and

(b) the interest holder liability of its shareholders.

(2) A foreign corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

(3) Registration of a foreign corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic corporation may not engage in or exercise in this state.

NEW SECTION. **Section 204. Registration to do business in this state.** (1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (4), THE failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A CONTRACT BETWEEN THE STATE OF MONTANA, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND A FOREIGN CORPORATION THAT HAS FAILED TO REGISTER TO DO BUSINESS AS REQUIRED UNDER [SECTION 207(4)] IS VOIDABLE BY THE STATE, THE CONTRACTING STATE AGENCY, OR THE CONTRACTING POLITICAL SUBDIVISION.

~~(4)~~(5) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

~~(5)~~(6) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through 214].

NEW SECTION. **Section 205. Foreign registration statement.** To register to do business in this state, a foreign corporation shall deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the foreign corporation and state:

(1) the corporate name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(2) the foreign corporation's jurisdiction of formation;

(3) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers;

(6) a brief description of the nature of its business to be conducted in this state; and

(7) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

NEW SECTION. **Section 206. Amendment of foreign registration statement.** A registered foreign corporation shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its jurisdiction of formation unless its registration is determined to have been withdrawn under [section 210] or transferred under [section 212]; or

(3) an address required by [section 205(3)].

NEW SECTION. **Section 207. Activities not constituting doing business.** (1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that IS COMPLETED WITHIN 30 DAYS AND THAT is not in the course of ~~similar~~ REPEATED transactions OF A SIMILAR NATURE; and

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign

corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

(4) A FOREIGN CORPORATION IS TRANSACTING BUSINESS WITHIN THE MEANING OF SUBSECTION (1) IF IT ENTERS INTO A CONTRACT, INCLUDING A CONTRACT ENTERED INTO PURSUANT TO TITLE 18, WITH THE STATE OF MONTANA, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND MUST REGISTER TO DO BUSINESS UNDER [SECTIONS 203 THROUGH 214] BEFORE ENTERING INTO THE CONTRACT. THIS SUBSECTION DOES NOT APPLY TO CONTRACTS FOR GOODS FULLY PREPARED OR SERVICES FULLY PERFORMED OUT OF STATE FOR DELIVERY OR USE IN THIS STATE.

NEW SECTION. **Section 208. Noncomplying name of foreign corporation.** (1) A foreign corporation whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with [section 39] by filing a foreign registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212] setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do business in this state with an alternate name, a foreign corporation shall do business in this state under:

(a) the alternate name;

(b) the foreign corporation's name, with the addition of its jurisdiction of formation; or

(c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

(2) If a registered foreign corporation changes its name after registration to a name that does not comply with [section 39], it may not do business in this state until it complies with subsection (1) of this section by amending its registration statement to adopt an alternate name that complies with [section 39].

NEW SECTION. **Section 209. Withdrawal of registration of registered foreign corporation.** (1) A registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

(a) the name of the foreign corporation and its jurisdiction of formation;

(b) that the foreign corporation is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign corporation revokes the authority of its registered agent in this state;

(d) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(e) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(f) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 210. Withdrawal upon domestication or conversion to certain domestic entities.** A registered foreign corporation that domesticates to a domestic business corporation or converts to a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership is considered to have withdrawn its registration on the effective date of that event.

NEW SECTION. **Section 211. Withdrawal upon dissolution or conversion to nonfiling entities.** (1) A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic or foreign nonfiling entity and must state:

(a) in the case of a foreign corporation that has completed winding up:

(i) its name and jurisdiction of formation;

(ii) that the foreign corporation withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iii) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(iv) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from

the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(v) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation; or

(b) in the case of a foreign corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting foreign corporation and its jurisdiction of formation;

(ii) the type of the nonfiling entity to which it has converted and its name and jurisdiction of formation;

(iii) that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iv) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(v) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(vi) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 212. Transfer of registration.** (1) If a registered foreign corporation merges into a nonregistered foreign corporation or converts to a foreign corporation required to register with the secretary of state to do business in this state, the foreign corporation shall deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or converted foreign corporation and must state:

(a) the name of the registered foreign corporation and its jurisdiction of formation before the merger or conversion;

(b) the name of the surviving or converted foreign corporation and its jurisdiction of formation after the

merger or conversion and, if the name does not comply with [section 39], an alternate name adopted pursuant to [section 208]; and

(c) the following information regarding the surviving or converted foreign corporation after the merger or conversion:

(i) the street and mailing addresses of the principal office of the foreign corporation and, if the law of the foreign corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office.

(2) On the effective date of a transfer of registration statement as determined in accordance with [section 6], the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign corporation into which it has merged or to which it has been converted.

NEW SECTION. **Section 213. Administrative termination of registration.** (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

~~(2) The secretary of state may terminate the registration of a registered foreign corporation by:~~

~~(a) filing a certificate of termination; and~~

~~(b) delivering a copy of the certificate of termination to the foreign corporation's registered agent or, if the foreign corporation does not have a registered agent, to the foreign corporation's principal office.~~

(2) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL COMPILE A LIST OF

REGISTERED FOREIGN CORPORATIONS FOR WHICH ONE OR MORE GROUNDS EXIST UNDER SUBSECTION (1) FOR TERMINATING ITS REGISTRATION AND SHALL SERVE THE REGISTERED FOREIGN CORPORATION WITH WRITTEN NOTICE OF THE DETERMINATION UNDER [SECTION 45].

(3) IF THE REGISTERED FOREIGN CORPORATION DOES NOT CORRECT EACH GROUND FOR TERMINATION OR DEMONSTRATE TO THE REASONABLE SATISFACTION OF THE SECRETARY OF STATE THAT EACH GROUND FOR TERMINATION DETERMINED BY THE SECRETARY OF STATE DOES NOT EXIST WITHIN 60 DAYS AFTER THE NOTICE IS DELIVERED, THE SECRETARY OF STATE MAY TERMINATE THE REGISTRATION OF A REGISTERED FOREIGN CORPORATION BY ISSUING A CERTIFICATE OF TERMINATION. The certificate of termination must state~~:~~

~~(a)~~ the effective date of the termination, which must be not less than ~~90~~ 60 days after the secretary of state delivers the ~~copy of the certificate of termination~~ NOTICE as prescribed in subsection (2)(b)~~; and~~

~~(b) the grounds for termination under subsection (1)~~.

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination ~~unless before that date the foreign corporation cures each ground for termination stated in the certificate of termination. If the foreign corporation cures each ground, the secretary of state shall file a statement that the certificate of termination is withdrawn~~.

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 214. Action by attorney general.** The attorney general may maintain an action to enjoin a foreign corporation from doing business in this state in violation of [sections 1 through 221].

NEW SECTION. **Section 215. Corporate records.** (1) A corporation shall maintain the following records:

(a) its articles of incorporation as currently in effect;

(b) any notices to shareholders referred to in [section 3(11)(e)] specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in [section 3(11)(e)];

(c) its bylaws as currently in effect;

(d) all written communications within the past 3 years to shareholders generally;

(e) minutes of all meetings of and records of all actions taken without a meeting by its shareholders, its board of directors, and board committees established under [section 109];

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 221].

(2) A corporation shall maintain all annual financial statements prepared for the corporation for its last 3 fiscal years or any shorter period of existence and any audit or other reports with respect to those financial statements.

(3) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(4) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the address of and the number and class or series of shares held by each shareholder. Nothing in this subsection requires the corporation to include in the record the electronic mail address or other electronic contact information of a shareholder.

(5) A corporation shall maintain the records specified in this section in a manner that allows them to be made available for inspection within a reasonable time.

NEW SECTION. **Section 216. Inspection rights of shareholders.** (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 215(1)], excluding minutes of meetings of and records of actions taken without a meeting by the corporation's board of directors and board committees established under [section 109], if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) the financial statements of the corporation maintained in accordance with [section 215(2)];

(b) accounting records of the corporation;

(c) excerpts from minutes of any meeting of or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with [section 215(1)]; and

(d) the record of shareholders maintained in accordance with [section 215(4)].

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) the shareholder's demand is made in good faith and for a proper purpose;

(b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) the records are directly connected with the shareholder's purpose.

(4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (2).

(5) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different from the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made the information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide this information does not affect the validity of action taken at the meeting.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(7) This section does not affect:

(a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of production of records described in subsection (2) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (3) of this section.

(8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 217. Scope of inspection right.** (1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under [section 216].

(2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records

under [section 216] by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under [section 216(2)(d)] by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(4) The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of those costs.

NEW SECTION. **Section 218. Court-ordered inspection.** (1) If a corporation does not allow a shareholder who complies with [section 216(1)] to inspect and copy any records required by that section to be available for inspection, the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder who complies with [section 216(2)] to inspect and copy the records required by that section, the shareholder, if the shareholder also complies with [section 216(3)], may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under [section 216(2)], it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

(a) a reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or

(b) required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

NEW SECTION. **Section 219. Inspection rights of directors.** (1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a

board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

NEW SECTION. **Section 220. Financial statements for shareholders.** (1) Upon the written request of a shareholder, a corporation shall deliver or make available to the requesting shareholder by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the corporation for which annual financial statements have been prepared. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for the specified period, the corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported on by a public accountant, the report must also be delivered or made available to the requesting shareholder.

(2) A corporation shall deliver or make available and provide written notice of availability of the financial statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a written request to the corporation.

(3) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(4) Notwithstanding the provisions of subsections (1) through (3):

(a) as a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of the financial statements; and

(b) the corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

(5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (2) within 5 business days of delivery of the request to the corporation:

(a) The requesting shareholder may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(b) If the court orders delivery of or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(c) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

(d) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(e) If the court orders delivery of or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

NEW SECTION. **Section 221. Annual report for secretary of state.** (1) Each domestic corporation shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the corporation;

(b) the street and mailing address of its registered office and the name of its registered agent at that office in this state;

(c) the street and mailing address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(b) the foreign corporation's jurisdiction of formation;

(c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(d) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(e) the names and business addresses of its directors and principal officers; and

(f) a brief description of the nature of its business conducted in this state.

(3) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15 of subsequent years.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing ~~and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the notice from the secretary of state becomes effective as determined in accordance with [section 15], it is considered timely filed~~. THE CORRECTED REPORT MUST BE FILED BY APRIL 15 TO BE CONSIDERED TIMELY FILED.

Section 222. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider

of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity~~, as defined in 35-1-113,~~ that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 223. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation -- application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or the officer's agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include,

at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation ~~in 35-1-216~~;

(iii) the information required by 35-7-105(1);

(iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 224. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ Title 35, upon request

of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana."

Section 225. Section 20-5-320, MCA, is amended to read:

"20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not

required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid

as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

Section 226. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure -- rulemaking authority. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in ~~35-1-310~~ [section 39].

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state."

Section 227. Section 32-1-112, MCA, is amended to read:

"32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of ~~Title 35, chapter 1,~~ [sections 1 through 221] apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with ~~Title 35, chapter 1~~ [sections 1 through 221].

(2) The provisions of [sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216] ~~35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10,~~ do not apply to banks."

Section 228. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to

organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in ~~Title 35, chapter 1~~ [sections 1 through 221]. The articles of incorporation must set forth:

(a) the information required by ~~35-1-216(1)~~ [section 28(1)];

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in ~~35-1-216(2)~~ [section 28(2)].

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 229. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in ~~Title 35, chapter 1, part 11~~ [sections 215 through 221]."

Section 230. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock -- rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing,

and public services. A bank may also, with the department's approval, purchase interests in an entity~~, as defined in 35-1-113,~~ that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 231. Section 33-3-103, MCA, is amended to read:

"33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935~~ [sections 184 through 188] apply to the voluntary dissolution of a domestic insurer."

Section 232. Section 33-3-215, MCA, is amended to read:

"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8,~~ [sections 171

through 183] as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13."

Section 233. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution. (1) At least 60 days before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-931~~ [section 184], the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required ~~by 35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the

resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 234. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under ~~Title 35, chapter 1, part 9, or~~ Title 35, chapter 2, part 7, or [sections 184 through 202] apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 235. Section 33-3-603, MCA, is amended to read:

"33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under ~~35-1-934 or~~ 35-2-724 or [section 187], the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 236. Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the

commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners, including electronically if required by the commissioner, and completed in accordance with instructions provided by the national association of insurance commissioners and the national association of insurance commissioners' accounting practices and procedures manual.

(5) All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at the time of licensure.

(6) (a) The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.

(b) Each risk retention group shall disclose the determinations of independence to the commissioner annually.

(c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.

(ii) A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's immediate family, or any business with which the person is affiliated:

(A) has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group, compensation or payment of any item of value that accounts for either 5% of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;

(B) has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or

(C) has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.

(7) (a) A material service provider contract with a risk retention group or its renewal:

(i) may not exceed 5 years;

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for

underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of:

(i) the integrity of the financial statements;

(ii) the board's compliance with legal and regulatory requirements; and

(iii) the qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(d) discuss policies with respect to risk assessment and risk management;

(e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(f) review with the independent auditor any audit problems or difficulties and management's response;

(g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(h) require the external auditor to rotate the lead or coordinating audit partner having primary

responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and

(i) report regularly to the board of directors.

(11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.

(b) For the purposes of this subsection (11), the information must include:

(i) the process by which the directors are elected by the owner or the insureds;

(ii) qualification standards, responsibilities, and compensation for directors;

(iii) director access to management and, as necessary and appropriate, to independent advisors;

(iv) director orientation and continuing education;

(v) management succession policies and procedures; and

(vi) annual board performance evaluation policies and procedures.

(12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.

(b) The code must address:

(i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ director's conflicting interest transactions as defined in [section 129];

(ii) confidentiality;

(iii) fair dealing;

(iv) protection and proper use of risk retention group assets;

(v) compliance with all applicable laws, rules, and regulations; and

(vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

Section 237. Section 33-12-104, MCA, is amended to read:

"33-12-104. Authorization of investments by board of directors. (1) An insurer's board of directors

shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in ~~35-1-418~~ [section 111]."

Section 238. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the

individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction

with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member, employee, officer, director, or stockholder of a business entity who is acting as an insurance producer in this state has obtained a license;

(e) (i) with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority~~ registration under ~~35-1-1312~~ [section 11] or filed articles of incorporation under ~~35-1-220~~ [section 29].

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 239. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of

authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first ~~obtains from~~ registers with the secretary of state ~~a certificate of authority~~ to transact business in this state as a foreign corporation under ~~35-1-1028~~ [section 204].

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain~~,~~ at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner

determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

Section 240. Section 35-1-1403, MCA, is amended to read:

"35-1-1403. Purpose. (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under ~~35-1-114~~ [section 35] and any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with subsection (2).

(2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the

identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote."

Section 241. Section 35-1-1406, MCA, is amended to read:

"35-1-1406. Benefit corporation governance -- liability. (1) A director of a public benefit corporation shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or

group referred to in this subsection (2) over any other factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with this part is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

Section 242. Section 35-1-1407, MCA, is amended to read:

"35-1-1407. Conversion to benefit corporation. (1) A corporation may become a benefit corporation under this part by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving

corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if the conversion is approved by the other entity by at least the minimum status vote."

Section 243. Section 35-1-1408, MCA, is amended to read:

"35-1-1408. Termination -- reorganization -- other actions affecting benefit corporation. (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in ~~35-1-827~~ [section 172]."

Section 244. Section 35-2-826, MCA, is amended to read:

"35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under ~~35-1-309, 35-1-311,~~ 35-2-306, ~~or~~ 35-2-307, [section 40], or [section 41];

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is

incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 245. Section 35-4-503, MCA, is amended to read:

"35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in ~~Title 35, chapter 6~~ [sections 193 through 196]."

Section 246. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service of process. (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments or a true copy certified by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under ~~35-1-1028~~ [section 205] and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that

service of process may be made upon some person, a citizen of this state whose principal place of business is designated in the certificate. Service of process, when made upon the agent, is valid service on the business trust."

Section 247. Section 35-6-101, MCA, is amended to read:

"35-6-101. Applicability to corporations presently in default. (1) The secretary of state may initiate procedures consistent with this chapter to dissolve nonprofit corporations organized under Title 35, chapters 2 and 3 ~~that have been in default prior to July 1, 1977~~.

(2) Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections 1 through 221] is governed by [sections 193 through 196].

(3) As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized under Title 35, chapters 4 and 9, or [sections 1 through 221]."

Section 248. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution -- grounds. (1) Any domestic corporation organized under Title 35, chapters 2 and 3, ~~whether for profit or not for profit,~~ may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 249. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution -- procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or~~ 35-2-729~~, whichever is appropriate,~~ is applicable to liquidate the property and assets if necessary."

Section 250. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through 35-1-943 or~~ 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 251. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain

business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by ~~35-1-308~~ [section 39].

(4) Contests over names registered under this section are governed by ~~35-1-310~~ [section 39]."

Section 252. Section 35-9-103, MCA, is amended to read:

"35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 253. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of

shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of ~~35-1-628~~ [section 57] and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 254. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the

result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under ~~Title 35, chapter 1, part 8,~~ [sections 161 through 168] or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 255. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208."

Section 256. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-416~~ [section 93]."

Section 257. Section 35-9-303, MCA, is amended to read:

"35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

Section 258. Section 35-9-402, MCA, is amended to read:

"35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 259. Section 35-9-404, MCA, is amended to read:

"35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through 35-1-935~~ [sections 184 through 188].

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders

of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 260. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section 197].

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has ~~dissenters'~~ appraisal rights under this chapter or ~~35-1-826 through 35-1-839~~ [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have."

Section 261. Section 35-9-504, MCA, is amended to read:

"35-9-504. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 262. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

Section 263. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) ~~Such~~ The persons desiring to incorporate ~~must~~ shall prepare, sign, acknowledge, and file a petition with the clerk of the district court of the

county in which the lands or the greater portion of the lands included in the petition are situate, ~~such~~ the petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is to be formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which ~~shall~~ may not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. ~~Such~~ The directors or trustees ~~shall~~ must at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for ~~such~~ the incorporation or district, with a description of the lands ~~which~~ that each owns and that are proposed to be submitted to ~~said~~ the corporation or district and the character of the ~~same~~ lands and their production, ~~also~~ as well as a consent of the owners to submit the lands to the provisions ~~hereof~~ of this section;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing ~~the same~~ them in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) ~~Such~~ The petition ~~shall~~ must be accompanied by a map giving location of the lands sought to be included in ~~such~~ the corporation or district, but nothing ~~herein to be~~ in this subsection may be construed as requiring ~~such~~ the lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of ~~such~~ the corporation or district, ~~shall~~ must be filed with the petition."

Section 264. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association."

Section 265. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in ~~35-1-216~~ [section 28]; and

(b) provisions for classification of members in a cooperative.

(3) A cooperative's articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 266. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge."

Section 267. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed $450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations~~, as defined in 35-1-113,~~ may not apply."

Section 268. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to [sections 1 through 221] or Title 85, chapter 6, part 1, ~~or Title 35, chapter 1, part 2,~~ for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to ~~Title 35, chapter 1, part 2,~~ [sections 1 through 221] or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

NEW SECTION. **Section 269. Repealer.** The following sections of the Montana Code Annotated are repealed:

35-1-112. Short title.
35-1-113. Definitions.
35-1-114. Purposes.
35-1-115. General powers.
35-1-116. Notice.
35-1-117. Ultra vires.
35-1-118. Reservation of power to amend or repeal.
35-1-119. Liability of and to ostensible corporations.
35-1-215. Incorporators.
35-1-216. Articles of incorporation.
35-1-217. Filing requirements.
35-1-218. Facsimile filing -- requirements -- liability.
35-1-219. Effective time and date of document.
35-1-220. Incorporation.
35-1-221. Correcting filed document.
35-1-222. Organization of corporation.
35-1-225. Authority to amend.
35-1-226. Amendment by board of directors.
35-1-227. Amendment by board of directors and shareholders.
35-1-228. Voting on amendments by voting groups.
35-1-229. Amendment before issuance of shares.
35-1-230. Articles of amendment.

35-1-231. Restated articles of incorporation.
35-1-232. Amendment pursuant to reorganization.
35-1-233. Effect of amendment.
35-1-234. Bylaw amendment by board of directors or shareholders.
35-1-235. Extension of duration of corporation.
35-1-236. Bylaws.
35-1-237. Emergency bylaws.
35-1-238. Bylaw increasing quorum or voting requirement for shareholders.
35-1-239. Bylaw increasing quorum or voting requirement for directors.
35-1-308. Corporate name.
35-1-309. Reserved name.
35-1-310. Contest of registration of name -- penalty.
35-1-311. Registered name of foreign corporation.
35-1-416. Requirement for and duties of board of directors.
35-1-417. Qualifications of directors.
35-1-418. General standards for directors.
35-1-419. Number and election of directors.
35-1-420. Election of directors by certain classes of shareholders.
35-1-421. Terms of directors generally.
35-1-422. Staggered terms for directors.
35-1-423. Resignation of directors.
35-1-424. Removal of directors.
35-1-425. Removal of directors by judicial proceeding.
35-1-426. Vacancy on board.
35-1-427. Compensation of directors.
35-1-428. Penalty for signing false document.
35-1-431. Meetings.
35-1-432. Action without meeting.
35-1-433. Notice of meeting.
35-1-434. Waiver of notice.

35-1-435.	Quorum -- voting.
35-1-439.	Committees.
35-1-441.	Required officers.
35-1-442.	Duties of officers.
35-1-443.	Standards of conduct for officers.
35-1-444.	Resignation and removal of officers.
35-1-445.	Contract rights of officers.
35-1-451.	Definitions.
35-1-452.	Authority to indemnify.
35-1-453.	Mandatory indemnification.
35-1-454.	Advance for expenses.
35-1-455.	Court-ordered indemnification.
35-1-456.	Determination and authorization of indemnification.
35-1-457.	Indemnification of officers, employees, and agents.
35-1-458.	Insurance.
35-1-459.	Application.
35-1-461.	Definitions.
35-1-462.	Judicial action.
35-1-463.	Directors' action.
35-1-464.	Shareholders' action.
35-1-516.	Annual meeting.
35-1-517.	Special meeting.
35-1-518.	Court-ordered meeting.
35-1-519.	Action without meeting.
35-1-520.	Notice of meeting.
35-1-521.	Waiver of notice.
35-1-522.	Record date.
35-1-523.	Shareholders' list for meeting.
35-1-524.	Voting entitlement of shares.
35-1-525.	Proxies.

35-1-526.	Shares held by nominees.
35-1-527.	Corporation's acceptance of votes.
35-1-528.	Quorum and voting requirements for voting groups.
35-1-529.	Action by single and multiple voting groups.
35-1-530.	Greater quorum or voting requirements.
35-1-531.	Voting for directors -- cumulative voting.
35-1-532.	Voting trusts.
35-1-533.	Voting agreements.
35-1-534.	Liability of shareholders.
35-1-535.	Shareholders' preemptive rights.
35-1-541.	Definitions.
35-1-542.	Standing.
35-1-543.	Demand.
35-1-544.	Stay of proceedings.
35-1-545.	Dismissal.
35-1-546.	Discontinuance or settlement -- notice.
35-1-547.	Payment of expenses.
35-1-548.	Applicability to foreign corporations.
35-1-550.	Number of shareholders.
35-1-618.	Authorized shares.
35-1-619.	Terms of class or series determined by board of directors.
35-1-620.	Issued and outstanding shares.
35-1-621.	Fractional shares.
35-1-622.	Subscription for shares before incorporation.
35-1-623.	Issuance of shares.
35-1-624.	Share dividends.
35-1-625.	Share options.
35-1-626.	Form and content of certificates.
35-1-627.	Shares without certificates.
35-1-628.	Restriction on transfer or registration of transfer of shares and other securities.

35-1-629.	Expense of issue.
35-1-630.	Corporation's acquisition of its own shares.
35-1-712.	Distributions to shareholders.
35-1-713.	Liability for unlawful distributions.
35-1-813.	Merger.
35-1-814.	Share exchange.
35-1-815.	Action on plan.
35-1-816.	Articles of merger or share exchange.
35-1-817.	Effect of merger or share exchange.
35-1-818.	Merger of subsidiary.
35-1-819.	Merger or share exchange with foreign corporation.
35-1-820.	Shareholder agreements.
35-1-822.	Sale of assets in regular course of business -- mortgage of assets.
35-1-823.	Sale of assets other than in regular course of business.
35-1-826.	Definitions.
35-1-827.	Right to dissent.
35-1-828.	Dissent by nominees and beneficial owners.
35-1-829.	Notice of dissenters' rights.
35-1-830.	Notice of intent to demand payment.
35-1-831.	Dissenters' notice.
35-1-832.	Duty to demand payment.
35-1-833.	Share restrictions.
35-1-834.	Payment.
35-1-835.	Failure to take action.
35-1-836.	After-acquired shares.
35-1-837.	Procedure if shareholder dissatisfied with payment or offer.
35-1-838.	Court action.
35-1-839.	Court costs and attorney fees.
35-1-931.	Dissolution by incorporators or initial directors.
35-1-932.	Dissolution by board of directors and shareholders.

35-1-933.	Articles of dissolution.
35-1-934.	Revocation of dissolution.
35-1-935.	Effect of dissolution.
35-1-936.	Known claims against dissolved corporation.
35-1-937.	Unknown claims against dissolved corporation.
35-1-938.	Grounds for judicial dissolution.
35-1-939.	Discretion of court to grant relief other than dissolution.
35-1-940.	Procedure for judicial dissolution.
35-1-941.	Receivership or custodianship.
35-1-942.	Decree of dissolution.
35-1-943.	Deposit with state treasurer.
35-1-944.	State dissolution or withdrawal certificate.
35-1-1026.	Authority to transact business required.
35-1-1027.	Consequences of transacting business without authority.
35-1-1028.	Application for certificate of authority.
35-1-1029.	Amended certificate of authority.
35-1-1030.	Effect of certificate of authority.
35-1-1031.	Corporate name of foreign corporation.
35-1-1037.	Withdrawal of foreign corporation.
35-1-1038.	Grounds for revocation.
35-1-1039.	Procedure for and effect of revocation.
35-1-1040.	Appeal from revocation.
35-1-1104.	Annual report for secretary of state.
35-1-1106.	Corporate records.
35-1-1107.	Inspection of records by shareholders.
35-1-1108.	Scope of inspection right.
35-1-1109.	Court-ordered inspection.
35-1-1110.	Financial statement for shareholders.
35-1-1111.	Other reports to shareholders.
35-1-1206.	Fees for filing, copying, and services.

35-1-1307. Secretary of state -- powers -- rulemaking.
35-1-1308. Forms.
35-1-1309. Filing duty of secretary of state.
35-1-1310. Appeal from secretary of state's refusal to file document.
35-1-1311. Evidentiary effect of copy of filed document.
35-1-1312. Certificate of existence or authority.
35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

NEW SECTION. **Section 270. Transition -- application to existing domestic corporations.** [Sections 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221] that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

NEW SECTION. **Section 271. Codification instruction.** (1) [Sections 1 through 26] are intended to be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1, apply to [sections 1 through 26].

(2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

(3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

(4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

(5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

(6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part 6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

(7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

(8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

(9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

(10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14, part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

(11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14, part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

(12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14, part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

(13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14, part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

(14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14, part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

(15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14, part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

(16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14, part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].

NEW SECTION. **Section 272. Saving clause.** (1) Except as to procedural provisions, [sections 1 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].

NEW SECTION. **Section 273. Severability.** If a part of [sections 1 through 221] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **SECTION 274. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JUNE 1, 2020.

NEW SECTION. **Section 275. Applicability -- existing foreign corporations.** A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] is subject to [sections 1 through 221], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221].

- END -

SENATE BILL NO. 325

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112, 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104,

33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; ~~AND~~ REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 221] may be cited as the "Montana Business Corporation Act".

NEW SECTION. **Section 2. Reservation of power to amend or repeal.** The legislature has power to amend or repeal all or part of [sections 1 through 221] at any time, and all domestic and foreign corporations subject to [sections 1 through 221] are governed by the amendment or repeal.

NEW SECTION. **Section 3. Requirements for documents -- extrinsic facts.** (1) A document must satisfy the requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by [sections 1 through 221] and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing~~. Delivery may be made~~ by electronic transmission ~~if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document~~. THE SECRETARY OF STATE ~~MAY AUTHORIZE SHALL ALLOW~~ MAY AUTHORIZE EXCEPTIONS TO THE REQUIREMENT OF FILING DOCUMENTS BY ELECTRONIC TRANSMISSION.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the

time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of [sections 1 through 221] except [sections 203 through 214] or [section 221]; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed document;

(ii) the registered office of any entity required in a filed document;

(iii) the registered agent of any entity required in a filed document;

(iv) the number of authorized shares and designation of each class or series of shares;

(v) the effective date of a filed document; and

(vi) any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a document that is a matter of public record and the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

NEW SECTION. **Section 4. Forms.** (1) (a) The secretary of state may prescribe and furnish on request forms for:

(i) an application for a certificate of existence or certificate of registration;

(ii) a foreign corporation's registration statement;

(iii) a foreign corporation's statement of withdrawal;

(iv) a foreign corporation's transfer of registration statement; and

(v) the annual report.

(b) If the secretary of state requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by [sections 1 through 221], but their use is not mandatory.

NEW SECTION. **Section 5. Filing -- service -- copying fees.** (1) The secretary of state shall establish fees for:

(a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];

(b) issuing certificates and statements as required by [sections 1 through 26]; and

(c) copying and transmitting documents, priority handling, and responding to requests for information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

NEW SECTION. **Section 6. Effective date -- filed document.** (1) Except to the extent otherwise

provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

(a) on the date and at the time of filing, as provided in [section 8(2)];

(b) on the date of filing and at the time specified in the document as its effective time if later than the time under subsection (1)(a);

(c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or

(d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(2) If a filed document does not specify the time zone or place at which a date or time or both are to be determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this state.

NEW SECTION. **Section 7. Correcting filed document.** (1) A document filed by the secretary of state pursuant to [sections 1 through 221] may be corrected if:

(a) the document contains an inaccuracy;

(b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

(c) the electronic transmission was defective.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the inaccuracy or defect to be corrected; and

(iii) correct the inaccuracy or defect; and

(b) by delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

NEW SECTION. **Section 8. Filing duty -- secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall return to the person who delivered the document for filing a copy

of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within ~~5~~ 10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not create a presumption that:

(a) the document does or does not conform to the requirements of [sections 1 through 221]; or

(b) the information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

NEW SECTION. **Section 9. Appeal from secretary of state -- refusal to file document.** (1) If the secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing may petition the district court of the first judicial district to compel its filing. The document and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 10. Evidentiary effect -- certified copy of filed document.** A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

NEW SECTION. **Section 11. Certificate of existence or registration.** (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation.

(2) A certificate of existence sets forth:

(a) the domestic corporation's corporate name;

(b) that the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence of the domestic corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state;

(e) that articles of dissolution have not been filed;

(f) that the corporation is not administratively dissolved and a proceeding is not pending under [section 194]; and

(g) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) A certificate of registration sets forth:

(a) the foreign corporation's name used in this state;

(b) that the foreign corporation is registered to do business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the registration of the foreign corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state; and

(e) other facts of record in the office of the secretary of state that may be requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied on as conclusive evidence of the facts stated in the certificate.

NEW SECTION. **Section 12. Penalty -- signing false document.** (1) The execution of any document required to be filed with the secretary of state under [sections 1 through 26] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under [sections 1 through 26].

NEW SECTION. **Section 13. Powers.** (1) The secretary of state has the power reasonably necessary

to perform the duties required of the secretary of state by [sections 1 through 221].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 26], including establishing necessary fees.

NEW SECTION. **Section 14. General definitions.** For the purposes of [sections 1 through 221], unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in [section 28], all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary of state under any provision of [sections 1 through 221] that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under [sections 1 through 221] that restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of the entity means the document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Conspicuous" means written, displayed, or presented so that a reasonable person against whom the writing is to operate should have noticed it.

(5) "Corporation", "domestic corporation", "business corporation", or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under [sections 1 through 221].

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, and commercial delivery and, if authorized in accordance with [section 15], by electronic transmission.

(7) "Distribution" means a direct or indirect transfer of cash or other property except a corporation's own shares or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of:

(a) a payment of a dividend;

(b) a purchase, redemption, or other acquisition of shares;

(c) a distribution of indebtedness;

(d) a distribution in liquidation; or

(e) another form.

(8) "Document" means:

(a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of those instruments; or

(b) an electronic record.

(9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the law of this state.

(10) "Effective date", when referring to a document accepted for filing by the secretary of state, means the time and date determined in accordance with [section 6].

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(13) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) "Eligible interests" means interests or memberships.

(16) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) "Entity" includes:

(a) a domestic and foreign business corporation;

(b) a domestic and foreign nonprofit corporation;

(c) an estate;

(d) a trust;

(e) a domestic and foreign unincorporated entity; and

(f) a state, the United States, and a foreign government.

(18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including attorney fees.

(19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.

(22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.

(23) "Foreign registration statement" means the foreign registration statement described in [section 205].

(24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.

(25) "Governor" means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

(26) "Includes" and "including" denote a partial definition or a nonexclusive list.

(27) "Individual" means a natural person.

(28) "Interest" means either or both of the following rights under the organic law governing an unincorporated entity:

(a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(29) "Interest holder" means a person who holds of record an interest.

(30) (a) "Interest holder liability" means:

(i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or eligible entity that is imposed on a person:

(A) solely by reason of the person's status as a shareholder, member, or interest holder; or

(B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders or categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

(ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

(b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subsection (30)(a) when the corporation or eligible entity incurs the liability.

(31) "Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

(32) "Means" denotes an exhaustive definition.

(33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(34) "Merger" means a transaction pursuant to [section 162].

(35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic record.

(36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

(37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(38) "Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

(39) "Person" includes an individual and an entity.

(40) "Principal office" means the office, whether in this state or out of this state, designated in the annual report or foreign registration statement as the place where the principal executive offices of a domestic or foreign corporation are located.

(41) (a) "Private organic rules" means:

(i) the bylaws of a domestic or foreign business or nonprofit corporation; or

(ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record, if any.

(b) When private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(43) (a) "Public organic record" means:

(i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

(ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates the unincorporated entity and is required to be filed.

(b) When a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(44) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the record date is fixed, the determination must be made as of the close of business at the principal office of the corporation on the record date.

(45) "Record shareholder" means:

(a) the person in whose name shares are registered in the records of the corporation; or

(b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to [section 73] on file with the corporation to the extent of the rights granted by the certificate.

(46) "Registered foreign corporation" means a foreign corporation registered to do business in this state pursuant to [sections 203 through 214].

(47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(48) "Share exchange" means a transaction pursuant to [section 163].

(49) "Shareholder" means a record shareholder.

(50) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation are divided.

(51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed signature; or

(b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, including an electronic signature in an electronic transmission.

(52) "State", when referring to a part of the United States, includes a state, commonwealth, or territory or insular possession of the United States and their agencies and governmental subdivisions.

(53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(54) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following:

(i) a domestic or foreign business or nonprofit corporation;

(ii) a series of a limited liability company or of another type of entity;

(iii) an estate;

(iv) a trust; or

(v) a state, the United States, or a foreign government.

(b) The term includes a general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(56) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(58) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or [sections 1 through 221] are entitled to vote and be counted together collectively on a matter at

a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 221] to vote generally on the matter are for that purpose a single voting group.

(59) "Voting power" means the current power to vote in the election of directors.

(60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to [section 80(1)].

(61) "Writing" or "written" means any information in the form of a document.

NEW SECTION. **Section 15. Notices and other communications.** (1) A notice under [sections 1 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [sections 1 through 221] must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include:

(a) a newspaper of general circulation in the area where published;

(b) radio, television, or other form of public broadcast communication; or

(c) other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10). A CORPORATION THAT FILES DOCUMENTS WITH THE OFFICE OF THE SECRETARY OF STATE UNDER [SECTIONS 1 THROUGH 221] IS CONSIDERED TO HAVE GIVEN ITS IRREVOCABLE CONSENT TO DELIVERY OF NOTICES OR OTHER COMMUNICATIONS BY THE OFFICE OF THE SECRETARY OF STATE TO THE CORPORATION BY ELECTRONIC TRANSMISSION.

(5) Any consent under subsection (4) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

(a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation

in accordance with the consent; and

(b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or other person responsible for the giving of notice or other communications. However, the inadvertent failure to treat the inability as a revocation does not invalidate any meeting or other action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(b) it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under [section 215(4)];

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221], those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal act.

NEW SECTION. **Section 16. Number of shareholders.** (1) For purposes of [sections 1 through 221], the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; and

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of [sections 1 though 221], shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

NEW SECTION. **Section 17. Qualified director.** (1) A qualified director is a director who, at the time action is to be taken under:

(a) [section 28(2)(f)], is not a director:

(i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply; or

(ii) who has a material relationship with any other person to whom the limitation or elimination would apply;

(b) [section 87], does not have:

(i) a material interest in the outcome of the proceeding; or

(ii) a material relationship with a person who has such an interest;

(c) [section 122 or 124]:

(i) is not a party to the proceeding;

(ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or disclaimer is challenged in the proceeding; and

(iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);

(d) [section 131] is not a director:

(i) as to whom the transaction is a director's conflicting interest transaction; or

(ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(e) [section 133] is not a director who:

(i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of another person; or

(ii) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(2) For purposes of this section:

(a) "material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(b) "material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(3) The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(a) nomination or election of the director to the current board by any director who is not a qualified

director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(b) service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director; or

(c) with respect to action to be taken under [section 87], status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

NEW SECTION. **Section 18. Householding.** (1) A corporation has delivered written notice or any other report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(a) the corporation delivers one copy of the notice, report, or statement to the common address;

(b) the corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) is considered to have consented to receiving a single copy at the common address, provided that the notice of intention explains that consent may be revoked and the method for revoking.

NEW SECTION. **Section 19. Definitions -- ratification of defective corporate actions.** In [sections 19 through 26], the following definitions apply:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action

taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization; and

(b) an overissue.

(4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure would render the corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under [section 46] at the time of the issuance; or

(b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series (including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to those shares) that were created or issued as a result of a defective corporate action and that:

(a) but for any failure of authorization would constitute valid shares; or

(b) cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with [sections 1 through 221], including as a result of ratification or validation under [sections 19 through 26].

(8) (a) "Validation effective time", with respect to any defective corporate action ratified under [sections 19 through 26], means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by [section 23] becomes effective in accordance with [section 15]; or

(ii) the time at which any articles of validation filed in accordance with [section 25] become effective.

(b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under [section 26] or otherwise unless ordered by the court.

NEW SECTION. **Section 20. Defective corporate actions.** (1) A defective corporate action is not void or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

(2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive means of ratifying or validating a defective corporate action, and the absence or failure of ratification in accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise or create a presumption that any corporate action is or was a defective corporate action or is void or voidable.

(3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued on:

(a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the authorization, designation, or creation of the shares.

NEW SECTION. **Section 21. Ratification -- defective corporate actions.** (1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

(a) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) that the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) the earlier of the date on which those persons first took action or the date on which they were purported to have been elected as the initial board of directors; and

(c) that the ratification of the election of the person or persons as the initial board of directors is approved.

(3) If any provision of [sections 1 through 221], the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party that is in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with [section 22].

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

NEW SECTION. **Section 22. Action on ratification.** (1) The quorum and voting requirements applicable to a ratifying action by the board of directors under [section 21(1)] are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(2) If the ratification of the defective corporate action requires approval by the shareholders under [section 21(3)] and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose or one of the purposes of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(a) either a copy of the action taken by the board of directors in accordance with [section 21(1)] or the information required by [section 21(1)(a) through (1)(d)]; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative

shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by [section 21(3)] must be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(4) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring ratification exceed the votes cast opposing ratification of the election at a meeting at which a quorum is present.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under [section 21(3)] (and without giving effect to any ratification of putative shares that becomes effective as a result of the vote) are neither entitled to vote nor counted for quorum purposes in a vote to approve the ratification of a defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by [section 21], approval of an amendment to the articles of incorporation under [sections 149 through 160] to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue is also required.

NEW SECTION. **Section 23. Notice requirements.** (1) Unless shareholder approval is required under [section 21(3)], prompt notice of an action taken under [section 21] must be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(a) the date of the action by the board of directors; and

(b) the date the defective corporate action was ratified, provided that notice may not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) either:

(i) a copy of the action taken by the board of directors in accordance with [section 21(1) or (2)]; or

(ii) the information required by [section 21(1)(a) through (1)(d) or (2)(a) through (2)(c)], as applicable; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative

shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under [section 21(3)] if notice is given in accordance with [section 22(2)].

(4) A notice required by this section may be given in any manner permitted by [section 15] and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

NEW SECTION. **Section 24. Effect of ratification.** From and after the validation effective time and without regard to the 120-day period during which a claim may be brought under [section 26]:

(1) each defective corporate action ratified in accordance with [section 21] may not be void or voidable as a result of the failure of authorization identified in the action taken under [section 21(1) or (2)] and is considered a valid corporate action effective as of the date of the defective corporate action;

(2) the issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under [section 21] may not be void or voidable, and such putative share or fraction of a putative share is considered an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) any corporate action taken subsequent to the defective corporate action ratified in accordance with [sections 19 through 26] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action are valid as of the time taken.

NEW SECTION. **Section 25. Filings.** (1) If the defective corporate action ratified under [sections 19 through 26] would have required under any other section of [sections 1 through 221] a filing in accordance with [sections 1 through 221], then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by [sections 1 through 221], the corporation shall file articles of validation in accordance with this section, and the articles of validation serve to amend or substitute for any other filing with respect to the defective corporate action required by [sections 1 through 221].

(2) The articles of validation must set forth:

(a) the defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization in respect of the defective corporate action;

(d) a statement that the defective corporate action was ratified in accordance with [section 21], including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

(e) the information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) if a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(b) if a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

(i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(iii) the date and time that the filing is considered to have become effective; or

(c) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under [section 21] would have required a filing under any other section of [sections 1 through 221], the articles of validation must set forth:

(i) a statement that a filing containing all of the information required to be included under the applicable

section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(ii) the date and time that the filing is considered to have become effective.

NEW SECTION. **Section 26. Judicial proceedings -- validity of corporate actions.** (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under [section 21], or any other person claiming to be substantially and adversely affected by a ratification under [section 21], the district court in the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may:

(a) determine the validity and effectiveness of any corporate action or defective corporate action;

(b) determine the validity and effectiveness of any ratification under [section 21];

(c) determine the validity of any putative shares; and

(d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations regarding matters it considers proper under the circumstances.

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days of the validation effective time.

NEW SECTION. **Section 27. Incorporators.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

NEW SECTION. **Section 28. Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 39];

(b) the number of shares the corporation is authorized to issue;

(c) the street and mailing addresses of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iv) a par value for authorized shares or classes of shares; or

(v) the imposition of interest holder liability on shareholders;

(c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law;

(e) a provision permitting or making obligatory indemnification of a director for liability as defined in [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

(i) receipt of a financial benefit to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or its shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law; and

(f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation

the right to have or participate in any or one or more classes or categories of business opportunities before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer:

(i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131]; and

(ii) may be limited by the authorizing action of the board.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 221].

(4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) As used in this section, "related person" has the meaning specified in [section 129].

NEW SECTION. **Section 29. Incorporation.** (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

NEW SECTION. **Section 30. Liability for preincorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly and severally liable for all liabilities created while so acting.

NEW SECTION. **Section 31. Organization of corporation.** (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect initial directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

NEW SECTION. **Section 32. Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(3) The bylaws may contain one or both of the following provisions:

(a) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to the procedures or conditions provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to procedures and conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record date precedes its adoption.

(4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical, and orderly process.

NEW SECTION. **Section 33. Emergency bylaws.** (1) Unless the articles of incorporation provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 34. Forum selection.** (1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be brought in that other court of this state, notwithstanding that the other court of this state is not specified in the provision, and in any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) For the purposes of this section, "internal corporate claim" means:

(a) any claim that is based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity;

(b) any derivative action or proceeding brought on behalf of the corporation;

(c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the articles of incorporation or bylaws; or

(d) any action asserting a claim governed by the internal affairs doctrine that is not included in this subsection (4).

NEW SECTION. **Section 35. Purposes.** (1) Every corporation incorporated under [sections 1 through 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other statute.

NEW SECTION. **Section 36. General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221]

within or outside this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

NEW SECTION. **Section 37. Emergency powers.** (1) In anticipation of or during an emergency as provided in subsection (4), the board of directors of a corporation may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors must be given only to those directors whom it is practicable to reach and may be given in any practicable manner; and

(b) one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

NEW SECTION. **Section 38. Lack of power to act.** (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act;

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) in a proceeding by the attorney general under [section 197].

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

NEW SECTION. **Section 39. Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of similar meaning in another language; and

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 35] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated in this state that is not administratively dissolved. If the corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law of this state;

(c) the name of a foreign corporation registered to do business in this state or an alternate name adopted by a foreign corporation registered to do business in this state because its corporate name is unavailable;

(d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name adopted by a foreign nonprofit corporation registered to do business in this state because its real name is unavailable;

(f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved. If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(g) the name of a foreign unincorporated entity registered to do business in this state or an alternate name adopted by a foreign unincorporated entity registered to do business in this state because its real name is unavailable; and

(h) any assumed business name, trademark, or service mark reserved or registered with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation or unincorporated entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability partnership is incorporated or authorized to transact business in this state and the proposed user corporation, domestic filing entity, or limited liability partnership:

(a) has merged with the other corporation, filing entity, or limited liability partnership;

(b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

(c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing entity, or limited liability partnership; or

(d) has obtained written permission from the other corporation, filing entity, or limited liability partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) [Sections 1 through 221] do not control the use of fictitious names.

NEW SECTION. **Section 40. Reserved name.** (1) A person may reserve the exclusive use of a corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

NEW SECTION. **Section 41. Registered name.** (1) A foreign corporation may register its corporate name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 39(2)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state or country and date of its incorporation, and a brief description of the nature of the business that is to be conducted in this state.

(3) The name is registered for the applicant's exclusive use on the effective date of the application and for the remainder of the calendar year unless renewed.

(4) A foreign corporation whose name registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application that complies with the requirements of subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose name registration is effective may:

(a) register to do business as a foreign corporation under the registered name if it complies with [section 39(1)(b)]; or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic

corporation is incorporated or the foreign corporation registers to do business under that name.

NEW SECTION. **Section 42. Registered office and agent -- domestic and registered foreign corporations.** (1) Each corporation shall continuously maintain in this state~~:~~

~~(a)~~ a registered office~~, which may be the same as any of its places of business~~; and

~~(b)~~ a registered agent~~, which may be:~~

~~(i) an individual who resides in this state and whose business office is identical with the registered office; or~~

~~(ii) a domestic or foreign corporation or eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is registered to do business in this state~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

(2) As used in [sections 42 through 45], "corporation" means both a domestic corporation and a registered foreign corporation.

NEW SECTION. **Section 43. Change -- registered office -- registered agent.** ~~(1)~~ A corporation may change its registered office or registered agent ~~by delivering to the secretary of state for filing a statement of change that sets forth:~~

~~(a) the name of the corporation;~~

~~(b) the street and mailing addresses of its current registered office;~~

~~(c) if the current registered office is to be changed, the street and mailing addresses of the new registered office;~~

~~(d) the name of its current registered agent;~~

~~(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and~~

~~(f) that after the change or changes are made, the street and mailing addresses of its registered office and of the business office of its registered agent will be identical.~~

~~(2) If the street or mailing address of a registered agent's business office changes, the agent shall change the street or mailing address of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and delivering to the secretary of state for filing a signed statement that complies with the requirements of subsection (1) and states~~

~~that the corporation has been notified of the change~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

NEW SECTION. **Section 44. Resignation -- registered agent.** ~~(1)~~ A registered agent may resign as agent for a corporation ~~by delivering to the secretary of state for filing a statement of resignation signed by the agent that states:~~

~~(a) the name of the corporation;~~

~~(b) the name of the agent;~~

~~(c) that the agent resigns from serving as registered agent for the corporation; and~~

~~(d) the address of the corporation to which the agent will deliver the notice required by subsection (3).~~

~~(2) A statement of resignation takes effect on the earlier of:~~

~~(a) 12:01 a.m. on the 31st day after the day on which it is filed by the secretary of state; or~~

~~(b) the designation of a new registered agent for the corporation.~~

~~(3) A registered agent shall promptly deliver to the corporation notice of the date on which a statement of resignation was delivered to the secretary of state for filing.~~

~~(4) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under [sections 1 through 221] for any matter subsequently tendered to it as agent for the corporation. The resignation does not affect any contractual rights the corporation has against the agent or that the agent has against the corporation.~~

~~(5) A registered agent may resign with respect to a corporation regardless of whether the corporation is in good standing~~ IN COMPLIANCE WITH TITLE 35, CHAPTER 7.

NEW SECTION. **Section 45. Service on corporation.** (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid

and correctly addressed.

(3) If process, notice, or demand cannot be served on a corporation pursuant to subsection (1) or (2) or is to be served on a registered foreign corporation that has withdrawn its registration pursuant to [section 209 or 211] or the registration of which has been terminated pursuant to [section 213], then the secretary of state is an agent of the corporation on whom process, notice, or demand may be served. Service of any process, notice, or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection at the earliest of:

(a) the date the corporation receives the process, notice, or demand;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after the process, notice, or demand is deposited in the United States mail by the secretary of state.

(4) This section does not prescribe the only means or necessarily the required means of serving a corporation.

NEW SECTION. **Section 46. Authorized shares.** (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and, before the issuance of shares of a class or series, describe the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

(a) one or more classes or series of shares that together have full voting rights; and

(b) one or more classes or series of shares, which may be the same class, classes, or series as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent otherwise provided by [sections 1 through 221];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or on the occurrence of a specified event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) at prices and in amounts specified or determined in accordance with a formula;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including distributions on the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(6) The description of the preferences, rights, and limitations of classes or series of shares in subsection (3) is not exhaustive.

NEW SECTION. **Section 47. Terms of class or series -- determination by board of directors.** (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(a) classify any unissued shares into one or more classes or into one or more series within a class;

(b) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under [section 46], of:

(a) any class of shares before the issuance of any shares of that class; or

(b) any series within a class before the issuance of any shares of that series.

(3) Before issuing any shares of a class or series created under this section, the corporation shall deliver

to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (2).

NEW SECTION. **Section 48. Issued and outstanding shares.** (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to [section 60].

(3) At all times that shares of the corporation are outstanding, one or more shares that together have full voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

NEW SECTION. **Section 49. Fractional shares.** (1) A corporation may issue fractions of a share or in lieu of doing so may:

(a) pay in cash the value of fractions of a share;

(b) issue scrip in registered or bearer form entitling the holder to receive a full share on surrendering enough scrip to equal a full share; or

(c) arrange for disposition of fractional shares by the holders of those shares.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by [section 55(2)].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition, including that:

(a) the scrip will become void if not exchanged for full shares before a specified date; and

(b) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

NEW SECTION. **Section 50. Subscription for shares -- before incorporation.** (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of cash or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation delivers a written demand for payment to the subscriber.

NEW SECTION. **Section 51. Issuance of shares.** (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders at a meeting at which a

quorum consisting of a majority, or a greater number the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists if:

(i) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and

(ii) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(b) In this subsection (6):

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares is the greater of:

(A) the voting power of the shares to be issued; or

(B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

NEW SECTION. **Section 52. Liability of shareholders.** (1) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except:

(a) to the extent provided in a provision of the articles of incorporation permitted by [section 28(2)(b)(v)]; and

(b) that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

NEW SECTION. **Section 53. Share dividends.** (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issue;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which may not be retroactive. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

NEW SECTION. **Section 54. Share rights -- options -- warrants -- awards.** (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(a) the terms and conditions upon which the rights, options, or warrants are issued; and

(b) the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue the rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(2) The terms and conditions of the rights, options, or warrants may include restrictions or conditions that:

(a) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or

(b) invalidate or void the rights, options, or warrants held by any person or transferee described in subsection (2)(a).

(3) The board of directors may authorize one or more officers to:

(a) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of rights, options, warrants, or other equity compensation awards and the terms of the rights, options, warrants, or awards to be received by the recipients, provided that an officer

may not use this authority to designate the officer or any other person the board of directors may specify as a recipient of those rights, options, warrants, or other equity compensation awards.

NEW SECTION. **Section 55. Certificates -- form -- content.** (1) Shares may be, but need not be, represented by certificates. Unless [sections 1 through 221] or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize:

(a) the preferences, rights, and limitations applicable to each class and series;

(b) any variations in preferences, rights, and limitations among the holders of the same class or series; and

(c) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed by two officers designated in the bylaws.

(5) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

NEW SECTION. **Section 56. Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by [section 55(2) and (3)] and, if applicable, [section 57].

NEW SECTION. **Section 57. Restriction on transfer of shares.** (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation or may impose restrictions on, including the alteration or elimination of, the application of [section 201]. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction described in subsection (1) is valid and enforceable against a shareholder or a transferee of the shareholder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by [section 56(2)]. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction described in subsection (1) is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law; or

(c) for any other reasonable purpose.

(4) A restriction described in subsection (1) may:

(a) obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 58. Preemptive rights -- shareholder.** (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares, except to the extent the articles of incorporation provide that right.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar effect, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A preemptive right may be waived by a shareholder. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for cash.

(d) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

NEW SECTION. **Section 59. Corporation's acquisition of its own shares.** (1) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

NEW SECTION. **Section 60. Distributions to shareholders.** (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7), the effect of a distribution under subsection (3) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(8) This section does not apply to distributions in liquidation under [sections 184 through 202].

NEW SECTION. **Section 61. Annual meeting.** (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted by [section 64], a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors must be elected.

(2) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

NEW SECTION. **Section 62. Special meeting.** (1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or of the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled

to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under [section 63 or 67], the record date for determining shareholders entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on which the demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (1)(b) have been delivered to the corporation.

(3) Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by [section 65(3)] may be conducted at a special meeting of shareholders.

NEW SECTION. **Section 63. Court-ordered meeting.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of one or more shareholders who signed a demand for a special meeting valid under [section 62] if:

(i) notice of the special meeting was not given within 30 days after the first day on which the requisite number of demands was delivered to the corporation; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the shares represented at the meeting constitute a quorum for action on

those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) For purposes of subsection (1)(a), "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 64. Action without meeting.** (1) Action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, be signed by all the shareholders entitled to vote on the action, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) The articles of incorporation may provide that any action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action to be taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to [section 78], directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(3) If not otherwise fixed under [section 67] and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under [section 67] and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent is effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

(4) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described in that manner in any document. Unless the articles of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action have been delivered to the corporation.

(5) If [sections 1 through 221] require that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(6) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(7) The notice requirements in subsections (5) and (6) may not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements does not invalidate actions taken by written consent. However, this subsection may not be considered to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time period.

NEW SECTION. **Section 65. Notice of meeting.** (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to [section 69] for holders of any class or series of shares, the notice to the holders of that class or

series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting if that date is different from the record date for determining shareholders entitled to notice of the meeting. Unless [sections 1 through 221] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(2) Unless [sections 1 through 221] or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [section 63] or [section 67], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 67], however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

NEW SECTION. **Section 66. Waiver of notice.** (1) A shareholder may waive any notice required by [sections 1 through 221] or the articles of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

NEW SECTION. **Section 67. Record date for meeting.** (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders and may not be retroactive.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(5) The record dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

NEW SECTION. **Section 68. Conduct of meeting.** (1) At each meeting of shareholders, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of that provision, by the board of directors.

(2) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

(3) Rules adopted for the meeting and the conduct of the meeting must be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted on. If no announcement is made, the polls are considered to have closed on the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes and no revocations or changes to ballots, proxies, or votes may be accepted.

NEW SECTION. **Section 69. Remote participation -- shareholder's meetings.** (1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes the participation for that class or series. Participation as a shareholder by means of remote communication is subject to guidelines and procedures the board of directors adopts and must be in conformity with subsection (2).

(2) Shareholders participating in a shareholders' meeting by means of remote communication are considered present and may vote at the meeting if the corporation has implemented reasonable measures:

(a) to verify that each person participating remotely as a shareholder is a shareholder; and

(b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

NEW SECTION. **Section 70. Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and, within each voting group, by class or series of shares and must show the address of and number of shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 216(3)], to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or

any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

NEW SECTION. **Section 71. Voting entitlements of shares.** (1) Except as provided in subsections (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(5) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

NEW SECTION. **Section 72. Proxies.** (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; and

(e) a party to a voting agreement created under [section 81].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

NEW SECTION. **Section 73. Shares held by intermediaries and nominees.** (1) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder does not have those rights or privileges.

(2) The procedure must specify:

(a) the types of intermediaries or nominees to which it applies;

(b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;

(c) the manner in which the procedure is selected, which must include that the beneficial ownership certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective;

(f) requirements for notice to the corporation with respect to the arrangement; and

(g) the form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

NEW SECTION. **Section 74. Acceptance of votes -- other instruments.** (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment

does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under [section 79], the inspector of election also may

request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

NEW SECTION. **Section 75. Quorum and voting requirements -- voting groups.** (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

(5) The election of directors is governed by [section 78].

(6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that provision.

NEW SECTION. **Section 76. Action by single and multiple voting groups.** (1) If the articles of incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that matter is taken when it is voted on by that voting group as provided in [section 75].

(2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different times.

NEW SECTION. **Section 77. Modifying quorum or voting requirements.** An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 78. Voting for directors -- cumulative voting.** (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for that right.

(3) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors" or words of similar meaning means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

NEW SECTION. **Section 79. Inspectors of election.** (1) A corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors

in the performance of the duties of inspector under subsection (2) and may rely on information provided by those and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(2) The inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting;

(c) determine the validity of proxy appointments and ballots;

(d) count the votes; and

(e) make a written report of the results.

(3) In performing their duties, the inspectors may examine:

(a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

(b) any envelope or related writing submitted with the proxy appointment forms;

(c) any ballots;

(d) any evidence or other information specified in [section 74]; and

(e) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(4) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (2) specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that the information is relevant and reliable.

(5) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under [section 92] or other judicial proceeding.

NEW SECTION. **Section 80. Voting trusts.** (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the

provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that became effective prior to [the effective date of sections 1 through 221] remains governed by the statute concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

NEW SECTION. **Section 81. Voting agreements.** (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 80].

(2) A voting agreement created under this section is specifically enforceable.

NEW SECTION. **Section 82. Shareholder agreements.** (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in [section 60];

(c) establishes who may be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section is:

(a) as set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement

is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement.

NEW SECTION. **Section 83. Definitions -- derivative proceedings.** In [sections 83 through 90] the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 90], in the right of a foreign corporation.

(2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 84. Standing.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

NEW SECTION. **Section 85. Demand.** A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made on the corporation to take suitable action; and

(2) 90 days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

NEW SECTION. **Section 86. Stay of proceedings.** If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

NEW SECTION. **Section 87. Dismissal.** (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith, after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be made by:

(a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors constitute a quorum.

(3) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either:

(a) that a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(b) that the requirements of subsection (1) have not been met.

(4) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not, the corporation has the burden of proving that the requirements of subsection (1) have been met.

(5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

NEW SECTION. **Section 88. Discontinuance -- settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class or series of shareholders, the court shall direct that notice be given to the shareholders affected.

NEW SECTION. **Section 89. Payment of expenses.** On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper if it finds that the pleading, motion, or other paper:

(a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

NEW SECTION. **Section 90. Applicability to foreign corporations.** In any derivative proceeding in the right of a foreign corporation, the matters covered by [sections 83 through 90] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

NEW SECTION. **Section 91. Shareholder action to appoint custodian or receiver.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(2) The court:

(a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held;

(b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(c) has jurisdiction over the corporation and all of its property, wherever located.

(3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(4) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(a) a custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(b) a receiver:

(i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale if authorized by the court; and

(ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation to be paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 92. Judicial determination -- corporate offices -- review of elections and shareholder votes.** (1) Upon application of or in a proceeding commenced by a person specified in subsection

(2), the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may determine:

(a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(b) the right of an individual to hold the office of director or officer of the corporation;

(c) the result or validity of any vote by the shareholders of the corporation;

(d) the right of a director to membership on a committee of the board of directors; and

(e) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the following persons:

(a) the corporation;

(b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(c) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of the person's right to the office or membership;

(d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of the person's right to the office; and

(e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

(3) In connection with any application or proceeding under subsection (1), the following must be named as defendants unless the person made the application or commenced the proceeding:

(a) the corporation;

(b) any individual whose right to office or membership on a committee of the board of directors is contested;

(c) any individual claiming the office or membership at issue; and

(d) any person claiming a right covered by subsection (1)(e) that is at issue.

(4) In connection with any application or proceeding under subsection (1), service of process may be made on each of the persons specified in subsection (3) by either:

(a) service of process on the corporation addressed to the person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(b) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(5) When service of process is made on a person other than the corporation by service on the corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly provide written notice of the service, together with copies of all process and the application or complaint, to the person at the person's last-known residence or business address or as permitted by statute of this state or by rule of the applicable court.

(6) In connection with any application or proceeding under subsection (1), the court shall dispose of the application or proceeding on an expedited basis and also may:

(a) order additional or further notice the court considers proper under the circumstances;

(b) order that additional persons be joined as parties to the proceeding if the court determines that joinder is necessary for a just adjudication of matters before the court;

(c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or otherwise;

(d) appoint a master to conduct an election or meeting;

(e) enter temporary, preliminary, or permanent injunctive relief;

(f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(g) order any other relief the court determines is equitable, just, and proper.

(7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

(8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court that existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

NEW SECTION. **Section 93. Board of directors -- requirements -- functions.** (1) Except as may be

provided in an agreement authorized under [section 82], each corporation must have a board of directors.

(2) Except as may be provided in an agreement authorized under [section 82] and subject to any limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed by or under the direction of and subject to the oversight of the board of directors.

NEW SECTION. **Section 94. Qualifications of directors.** (1) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(2) A requirement that is based on a past, prospective, or current action or expression of opinion by a nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not a permissible qualification under this section. However, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(3) A director need not be a resident of this state or a shareholder unless the articles of incorporation or bylaws prescribe those requirements.

(4) A qualification for nomination for director prescribed before a person's nomination applies to the person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to the person with respect to the nomination.

(5) A qualification for director prescribed before a director has been elected or appointed applies only at the time an individual becomes a director or during a director's term. A qualification prescribed after a director has been elected or appointed does not apply to that director before the end of that director's term.

NEW SECTION. **Section 95. Directors -- number -- election.** (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or

unless their terms are staggered under [section 98].

NEW SECTION. **Section 96. Election of directors -- certain classes or series of shares.** If the articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes of the election of directors.

NEW SECTION. **Section 97. Terms of directors generally.** (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the extent:

(a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

(b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

NEW SECTION. **Section 98. Staggered terms for directors.** The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group

expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

NEW SECTION. **Section 99. Resignation of directors.** (1) A director may resign at any time by delivering a written notice of resignation to the board of directors or its chair or to the secretary.

(2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

NEW SECTION. **Section 100. Removal of directors by shareholders.** (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number. However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

NEW SECTION. **Section 101. Removal of directors by judicial proceeding.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) considering the director's course of conduct and the inadequacy of other available remedies, removal or other relief would be in the best interests of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

NEW SECTION. **Section 102. Vacancy -- board of directors.** (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

NEW SECTION. **Section 103. Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

NEW SECTION. **Section 104. Meetings.** (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this

means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

NEW SECTION. **Section 105. Action without meeting.** (1) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described in that manner in any document.

NEW SECTION. **Section 106. Notice of meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

NEW SECTION. **Section 107. Waiver of notice.** (1) A director may waive any notice required by [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of

the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

NEW SECTION. **Section 108. Quorum and voting.** (1) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in [sections 1 through 221].

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or transacting business at the meeting;

(b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

NEW SECTION. **Section 109. Committees of board.** (1) Unless [sections 1 through 221], the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

(3) [Sections 104 through 108] apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under [section 93] to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by shareholders;

(c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;

(d) adopt, amend, or repeal bylaws;

(e) approve a plan of merger, including plans not requiring shareholder approval;

(f) authorize or approve reacquisition of shares except according to a formula or method prescribed by the board of directors; or

(g) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

NEW SECTION. **Section 110. Submission of matters for shareholder vote.** A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

NEW SECTION. **Section 111. Standards of conduct for directors.** (1) Each member of the board of directors, when discharging the duties of a director, shall act:

(a) in good faith; and

(b) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a board committee, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a ~~similar~~ LIKE position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(4) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a) or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(5) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) A director is entitled to rely, in accordance with subsection (4) or (5), on:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

NEW SECTION. **Section 112. Standards of liability for directors.** (1) A director may not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(a) no defense interposed by the director precludes liability based on:

(i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];

(ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section 132]; or

(iii) the protection afforded by [section 133]; and

(b) the challenged conduct consisted or was the result of:

(i) action not in good faith; or

(ii) a decision:

(A) that the director did not reasonably believe to be in the best interests of the corporation; or

(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct and:

(A) the relationship, domination, or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) after a reasonable expectation of an effect on the director's judgment has been established, the director may not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for an inquiry; or

(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(2) The party seeking to hold the director liable:

(a) for money damages also has the burden of establishing that:

(i) harm to the corporation or its shareholders has been suffered; and

(ii) the harm suffered was proximately caused by the director's challenged conduct; or

(b) for other money payment under a legal remedy, such as compensation for the unauthorized use of

corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) Nothing in this section:

(a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional interest under [section 130];

(c) affects any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States; or

(d) invalidates or otherwise limits the business judgment rule under the common law.

NEW SECTION. **Section 113. Director's liability for unlawful distributions.** (1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes that when taking the action the director did not comply with [section 111].

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

(a) contribution from every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

(3) A proceeding to enforce:

(a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after the date:

(i) on which the effect of the distribution was measured under [section 60(5) or (7)];

(ii) as of which the violation of [section 60(1)] occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) on which the distribution of assets to shareholders under [section 192(1)] was made; or

(b) contribution or recoupment under subsection (2) is barred unless it is commenced within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

NEW SECTION. **Section 114. Officers.** (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to an officer responsibility for maintaining and authenticating the records of the corporation required to be kept under [section 215(1)].

(4) The same individual may simultaneously hold more than one office in a corporation.

NEW SECTION. **Section 115. Functions of officers.** Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

NEW SECTION. **Section 116. Standards of conduct for officers.** (1) An officer, when performing in an official capacity, has the duty to act:

(a) in good faith;

(b) with the care that a person in a ~~similar~~ LIKE position would reasonably exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation:

(a) to inform the superior officer to whom or the board of directors or the board committee to which the officer reports of information about the affairs of the corporation known to the officer within the scope of the officer's functions and known to the officer to be material to the superior officer, board, or committee; and

(b) to inform the officer's superior officer, another appropriate person within the corporation, or the board

of directors, or a board committee of any actual or probable material violation of law involving the corporation or any material breach of duty to the corporation by an officer, employee, or agent of the corporation that the officer believes has occurred or is likely to occur.

(3) In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(a) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence.

(4) An officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability will depend in each instance on applicable law, including those principles of [section 112] that have relevance.

NEW SECTION. **Section 117. Resignation and removal of officers.** (1) An officer may resign at any time by delivering a written notice to the corporation. A resignation is effective as provided in [section 15(9)] unless the notice provides for delayed effectiveness, including effectiveness determined on a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

(2) An officer may be removed at any time with or without cause by:

(a) the board of directors;

(b) the appointing officer unless the bylaws or the board of directors provides otherwise; or

(c) any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who

appointed the officer resigning or being removed.

NEW SECTION. **Section 118. Contract rights of officers.** (1) The election or appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

NEW SECTION. **Section 119. Definitions -- indemnification and advance for expenses.** For the purposes of [sections 119 through 128], unless the context clearly requires otherwise, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or who, while a director of the corporation, is or was serving at the corporation's request as a director of another entity or trustee of an employee benefit plan. A director is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of a director.

(3) "Liability" means the obligation to pay a judgment, a settlement, a penalty, a fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding, including attorney fees.

(4) "Officer" means an individual who is or was an officer of a corporation or who, while an officer of the corporation, is or was serving at the corporation's request as an officer of another entity or trustee of an employee benefit plan. An officer is considered to be serving as a trustee of an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of an officer.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an officer as contemplated in [section 125], the office in a corporation held

by the officer.

(b) The term does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan, or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

NEW SECTION. **Section 120. Permissible indemnification.** (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(a) (i) the director acted in good faith; and

(ii) the director reasonably believed:

(A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(B) in all other cases, that the conduct was at least not opposed to the best interests of the corporation; and

(iii) in the case of a criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful; or

(b) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by [section 28(2)(e)].

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the ~~best~~ interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under [section 123(1)(c)], a corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under

subsection (1); or

(b) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

NEW SECTION. **Section 121. Mandatory indemnification.** A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against expenses incurred by the director in connection with the proceeding.

NEW SECTION. **Section 122. Advance for expenses.** (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a director if the director delivers to the corporation a signed, written undertaking of the director to repay any funds advanced if:

(a) the director is not entitled to mandatory indemnification under [section 121]; and

(b) it is ultimately determined under [section 123] or [section 124] that the director is not entitled to indemnification.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section must be made:

(a) by the board of directors in the following manner:

(i) if there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or

(ii) by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of all the qualified directors; or

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (3)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

NEW SECTION. **Section 123. Court-ordered indemnification and advance for expenses.** (1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable~~:~~

~~(i)~~ to indemnify the director~~;~~ or

~~(ii)~~ to advance expenses to the director even if, IN EITHER CASE, the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c), it may also order the corporation to pay the director's expenses incurred to obtain court-ordered indemnification or advance for expenses.

NEW SECTION. **Section 124. Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under [section 120] unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in [section 120].

(2) The determination must be made:

(a) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of all the qualified directors;

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (2)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(3) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection (2)(b)(ii).

NEW SECTION. **Section 125. Indemnification of officers.** (1) A corporation may indemnify and advance expenses under [sections 119 through 128] to an officer who is a party to a proceeding because the person is an officer:

(a) to the same extent as a director; and

(b) if the person is an officer but not a director, to any further extent provided by the articles of incorporation or the bylaws or by a resolution adopted or a contract approved by the board of directors or shareholders, except for:

(i) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) liability arising out of conduct that constitutes:

(A) receipt by the officer of a financial benefit to which the officer is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders; or

(C) an intentional violation of criminal law.

(2) Subsection (1)(b) applies to an officer who is also a director if the officer is made a party to the proceeding based on an act or omission solely as an officer.

(3) An officer who is not a director is entitled to mandatory indemnification under [section 121] and may

apply to a court under [section 123] for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections.

NEW SECTION. **Section 126. Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation or a joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under [sections 119 through 128].

NEW SECTION. **Section 127. Variation by corporate action -- application.** (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with [section 120] or advance funds to pay for or reimburse expenses in accordance with [section 122]. An obligatory provision under this section satisfies the requirements for authorization referred to in [section 122(3)] and [section 124(3)]. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with [section 122] to the fullest extent permitted by law unless the provision expressly provides otherwise.

(2) A right of indemnification or to advances for expenses created by [sections 119 through 128] or under subsection (1) of this section and in effect at the time of an act or omission may not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders adopted after the occurrence of the act or omission unless, in the case of a right created under subsection (1), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision pursuant to subsection (1) may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise expressly provided. A provision for indemnification or advance for expenses in the articles of incorporation or bylaws or a resolution of the board of directors or shareholders of a predecessor of the

corporation in a merger or in a contract to which the predecessor is a party that exists at the time the merger takes effect is governed by [section 167(1)(d)].

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to [sections 119 through 128].

(5) [Sections 119 through 128] do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when the director or officer is not a party.

(6) [Sections 119 through 128] do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

NEW SECTION. **Section 128. Exclusivity.** A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by [sections 119 through 128].

NEW SECTION. **Section 129. Definitions -- director's conflicting interest transactions.** For the purposes of [sections 129 through 132], unless otherwise specified, the following definitions apply:

(1) "Control" or "controlled by" means:

(a) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(b) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(a) to which, at the relevant time, the director is a party;

(b) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(c) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of [section 130(2)(c)], that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(a) fair in terms of the director's dealings with the corporation; and

(b) comparable to what might have been obtainable in an arm's-length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(a) an individual's spouse;

(b) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of an individual or of an individual's spouse;

(c) a natural person living in the same home as an individual;

(d) an entity, other than the corporation or an entity controlled by the corporation, controlled by an individual or any person specified in subsections (5)(a) through (5)(c);

(e) a domestic or foreign:

(A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which an individual is a director;

(B) unincorporated entity of which an individual is a general partner or a member of the governing body; or

(C) individual, trust, or estate for whom or of which an individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) a person that is or an entity that is controlled by an employer of an individual.

(6) "Relevant time" means:

(a) the time at which directors' action respecting the transaction is taken in compliance with [section 131]; or

(b) if the transaction is not brought before the board of directors or a committee for action under [section 131], the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(a) the existence and nature of the director's conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that a director free of

that conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

NEW SECTION. **Section 130. Judicial action.** (1) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(2) A director's conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the grounds that the director has an interest respecting the transaction if:

(a) directors' action respecting the transaction was taken in compliance with [section 131] at any time;

(b) shareholders' action respecting the transaction was taken in compliance with [section 132] at any time; or

(c) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

NEW SECTION. **Section 131. Directors' action.** (1) Directors' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(a)] if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by the qualified directors or after modified disclosure in compliance with subsection (2), provided that:

(a) the qualified directors have deliberated and voted outside the presence of and without participation by any other director; and

(b) if the action has been taken by a board committee, all members of the committee were qualified directors and either:

(i) the committee was composed of all the qualified directors on the board of directors; or

(ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(2) Notwithstanding subsection (1), when a transaction is a director's conflicting interest transaction only because a related person of the director is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(a) all information required to be disclosed that is not violative of the duty, obligation, or rule;

(b) the existence and nature of the director's conflicting interest; and

(c) the nature of the conflicted director's duty not to disclose the confidential information.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the board committee constitutes a quorum for purposes of action that complies with this section.

(4) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a board committee, in which directors who are not qualified directors may participate.

NEW SECTION. **Section 132. Shareholders' action.** (1) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(b)] if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(a) notice to shareholders describing the action to be taken respecting the transaction;

(b) provision to the corporation of the information referred to in subsection (2); and

(c) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote must be determined as of the record date for notice of the meeting.

(2) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (3), and of the identity of the holders of those shares.

(3) For purposes of this section:

(a) "holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder,

and an unrestricted voting trust beneficial owner; and

(b) "qualified shares" means all shares entitled to be voted with respect to the transaction except shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows or under subsection (2) is informed are held by:

(i) a director who has a conflicting interest respecting the transaction; or

(ii) a related person of the director, excluding a person described in [section 129(5)(f)].

(4) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (5), shareholders' action that otherwise complies with this section is not affected by the presence of holders of or by the voting of shares that are not qualified shares.

(5) If a shareholders' vote does not comply with subsection (1) solely because of a director's failure to comply with subsection (2) and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take any action respecting the transaction and the director, and may give any effect to the shareholders' vote, that the court considers appropriate in the circumstances.

(6) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which shares that are not qualified shares may participate.

NEW SECTION. **Section 133. Business opportunities.** (1) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(a) before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 131]; or

(ii) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance

with the procedures set forth in [section 132], in either case as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in [section 129], the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(b) the duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and, if required, made effective by action of qualified directors in accordance with [section 28(2)(f)].

(2) In any proceeding seeking equitable relief or other remedies based on an alleged improper pursuit or taking advantage of a business opportunity by a director or officer directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (1)(a)(ii) before pursuing or taking advantage of the opportunity does not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

NEW SECTION. **Section 134. Definitions -- domestication -- conversion.** As used in [sections 134 through 148] the following definitions apply:

(1) "Conversion" means a transaction pursuant to [sections 143 through 148].

(2) "Converted entity" means the converting entity as it continues in existence after a conversion.

(3) "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion pursuant to [section 145] or the foreign eligible entity that approves a conversion pursuant to the organic law of the eligible entity.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to [section 139] or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(6) "Domestication" means a transaction pursuant to [sections 138 through 142].

(7) "Protected agreement" means:

(a) a document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before the enactment date;

(b) an agreement that is binding on a domestic corporation or eligible entity immediately before the enactment date;

(c) the articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before the enactment date; or

(d) an agreement that is binding on any of the shareholders, members, interest holders, directors, or other governors of a domestic corporation or eligible entity, in their official capacities, immediately before the enactment date. For purposes of [sections 138 and 143] and this subsection (7), "enactment date" means the earliest date on which the laws of this state authorized a transaction having the effect of a domestication or a conversion, as applicable.

NEW SECTION. **Section 135. Excluded transactions.** (1) [Sections 134 through 148] may not be used to effect a transaction that:

(a) converts or domesticates a company organized on the mutual principle to one organized on the basis of share ownership;

(b) converts or domesticates banks and trust companies regulated under Title 32, chapter 1;

(c) converts or domesticates building and loan associations regulated under Title 32, chapter 2;

(d) converts or domesticates credit unions regulated under Title 32, chapter 3; or

(e) converts or domesticates insurance companies regulated under Title 33.

(2) The conversion of a domestic corporation to a domestic benefit corporation is governed by Title 35, chapter 1, part 14, and not by [sections 134 through 148].

NEW SECTION. **Section 136. Required approvals.** If a domestic or foreign corporation or eligible entity may not be a party to a merger without the approval of the attorney general, the state auditor, the department of administration, or the public service commission and the applicable statutes or regulations do not specifically deal with transactions under [sections 134 through 148] but do require approval by one of those agencies or officials for mergers, a corporation or eligible entity may not be a party to a transaction under [sections 134 through 148] without the prior approval of that agency or official.

NEW SECTION. **Section 137. Relationship to other laws.** A transaction effected under [sections 134 through 148] does not create or impair a right, duty, or obligation of a person under the laws of this state other

than [sections 134 through 148] relating to a change in control, business combination, control-share acquisition, or a similar transaction involving a domesticating or converting domestic corporation unless the approval of the plan of domestication or conversion is by a vote of the shareholders or the board of directors that would be sufficient to create or impair the right, duty, or obligation directly under that law.

NEW SECTION. **Section 138. Domestication.** (1) By complying with the provisions of [sections 138 through 142] applicable to foreign corporations, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of [sections 138 through 142], a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) The plan of domestication must include:

(a) the name of the domesticating corporation;

(b) the name and jurisdiction of formation of the domesticated corporation;

(c) the manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination;

(d) the proposed articles of incorporation and bylaws of the domesticated corporation; and

(e) the other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) If a protected agreement of a domestic domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 139. Action on plan of domestication.** In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication must be adopted in the following manner:

(1) The plan of domestication must first be adopted by the board of directors.

(2) (a) The plan of domestication must then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of domestication by the shareholders or for the effectiveness of the plan of domestication.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of domestication requires the approval of a majority of the votes entitled to be cast on the plan and, except as provided in subsection (6), the approval of a majority of the votes entitled to be cast on the plan by any class or series of shares entitled to vote as a separate group on the plan. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights in subsection (5) of any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under [section 152] if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation

would become subject to interest holder liability, approval of the plan of domestication must require the signing in connection with the domestication, by each affected shareholder, of a separate written consent to become subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce that interest holder liability.

NEW SECTION. **Section 140. Articles of domestication -- effectiveness.** (1) After:

(a) a plan of domestication of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a foreign corporation that is a domesticating corporation has approved a domestication as required under its organic law, articles of domestication must be signed by the domesticating corporation. The articles must set forth:

(i) the name of the domesticating corporation and its jurisdiction of formation;

(ii) the name of the domesticated corporation and its jurisdiction of formation; and

(iii) if the domesticating corporation is:

(A) a domestic corporation, a statement that the plan of domestication was approved in accordance with [sections 134 through 148]; or

(B) a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(2) If the domesticated corporation is a domestic corporation, the articles of domestication must have attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28]. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(3) The articles of domestication must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the domestication becomes effective on the later of:

(a) the date and time provided by the organic law of the domesticated corporation; or

(b) the date the articles of domestication are effective.

(5) If the domesticating corporation is a foreign corporation that is registered to do business in this state under [sections 203 through 214], its registration statement is canceled automatically when the domestication becomes effective.

NEW SECTION. **Section 141. Amendment of plan of domestication -- abandonment.** (1) A plan of domestication of a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination to be received by any of the shareholders of the domesticating corporation under the plan;

(ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective except changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in the plan; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the secretary of state for filing but before the articles of domestication have become effective, articles of abandonment signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the domesticating corporation;

(b) the date on which the articles of domestication were filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

NEW SECTION. **Section 142. Effect of domestication.** (1) When a domestication becomes effective:

(a) all property owned by and every contract right possessed by the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and liabilities of the domesticated corporation;

(c) the name of the domesticated corporation may be but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) the articles of incorporation and bylaws of the domesticated corporation become effective;

(e) the shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) the domesticated corporation is:

(i) incorporated under and subject to the organic law of the domesticated corporation;

(ii) the same corporation without interruption as the domesticating corporation; and

(iii) considered to have been incorporated on the date the domesticating corporation was originally incorporated.

(2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability with respect to the domesticating corporation before the domestication becomes

effective is as follows:

(a) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(b) The provisions of the organic law of the domesticating corporation continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(4) A shareholder who becomes subject to interest holder liability with respect to the domesticated corporation as a result of the domestication has that interest holder liability only with respect to interest holder liabilities that arise after the domestication becomes effective.

(5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

NEW SECTION. **Section 143. Conversion.** (1) By complying with [sections 143 through 148], a domestic corporation may become:

(a) a domestic eligible entity; or

(b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

(2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic

eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through 148]. For purposes of applying [sections 143 through 148]:

(a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a business corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting corporation in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger until the first time the provision is amended after the enactment date.

NEW SECTION. **Section 144. Plan of conversion.** (1) A domestic corporation may convert to a domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan of conversion must include:

(a) the name of the converting corporation;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination;

(d) the other terms and conditions of the conversion; and

(e) the full text that will be in effect immediately after the conversion becomes effective of the organic rules of the converted entity, which must be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

NEW SECTION. **Section 145. Action on plan of conversion.** In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors.

(2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or for the effectiveness of the plan of conversion.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in writing as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the

plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the interest holder liability.

NEW SECTION. **Section 146. Articles of conversion -- effectiveness.** (1) After:

(a) a plan of conversion of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, articles of conversion must be signed by the converting entity and must:

(i) state the name, jurisdiction of formation, and type of entity of the converting entity;

(ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

(iii) if the converting entity is:

(A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections 143 through 148]; or

(B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with its organic law; or

(II) a domestic eligible entity the organic law of which does not provide for approval of the conversion, state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through 148]; and

(iv) if the converted entity is:

(A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached the public organic record of the converted entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

(B) a domestic limited liability partnership, have attached the filing required to become a limited liability partnership.

(2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of [section 28], except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that the public organic record does not need to be signed.

(3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the conversion itself becomes effective on the later of:

(a) the date and time provided by the organic law of that eligible entity; or

(b) the date the articles of conversion become effective.

(5) Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing satisfies the requirements of both the other organic law and this section.

(6) If the converting entity is a foreign eligible entity that is registered to do business in this state under a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign qualification is canceled automatically on the effective date of its conversion.

NEW SECTION. **Section 147. Amendment of plan of conversion -- abandonment.** (1) A plan of conversion of a converting entity that is a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination to be received by any of the shareholders of the converting corporation under the plan;

(ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes effective except changes that do not require approval of the eligible interest holders of the converted entity under

its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in any material respect.

(2) After a plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by [sections 143 through 148] and before the articles of conversion become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of state for filing and before the articles of conversion become effective, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the converting entity;

(b) the date on which the articles of conversion were filed by the secretary of state; and

(c) a statement that the conversion has been abandoned in accordance with this section.

NEW SECTION. **Section 148. Effect of conversion.** (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting entity remain the property and contract rights of the converted entity without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and other liabilities of the converted entity;

(c) the name of the converted entity may be but need not be substituted for the name of the converting entity in any pending action or proceeding;

(d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) if the converted entity is a nonfiling entity, its private organic rules become effective;

(f) if the converted entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests

or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity; and

(h) the converted entity is:

(i) incorporated or organized under and subject to the organic law of the converted entity;

(ii) the same entity without interruption as the converting entity; and

(iii) considered to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability with respect to that converting eligible entity before the conversion becomes effective is as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(c) The eligible interest holder has the rights of contribution from other persons that are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as

if the conversion had not occurred.

(d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

(5) A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after the conversion inures to the converted entity.

(8) A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

NEW SECTION. **Section 149. Authority to amend.** (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

NEW SECTION. **Section 150. Amendment before issuance of shares.** If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

NEW SECTION. **Section 151. Amendment by board of directors and shareholders.** If a corporation has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

(1) The proposed amendment must first be adopted by the board of directors.

(2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or for the effectiveness of the amendment.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability, the terms and conditions of the new interest holder liability:

(a) are substantially identical to those of the existing interest holder liability; or

(b) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce that interest holder liability.

(7) For purposes of [section 157] and subsection (6) of this section, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if:

(a) the person did not have interest holder liability before the amendment becomes effective; or

(b) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

NEW SECTION. **Section 152. Voting on amendments by voting groups.** (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment would:

(a) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(c) change the rights, preferences, or limitations of all or part of the shares of the class;

(d) change the shares of all or part of the class into a different number of shares of the same class;

(e) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(g) limit or deny an existing preemptive right of all or part of the shares of the class; or

(h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a

single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to [section 151(3)].

(4) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

NEW SECTION. **Section 153. Amendment by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) if the corporation has only one class of shares outstanding:

(a) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) to delete a class of shares from the articles of incorporation as a result of the operation of [section 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder approval.

NEW SECTION. **Section 154. Articles of amendment.** (1) After an amendment to the articles of incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

(a) the name of the corporation;

(b) the text of each amendment adopted or the information required by [section 3(11)(e)];

(c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section 3(11)(e)];

(d) the date of each amendment's adoption; and

(e) if an amendment:

(i) was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval was not required;

(ii) required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

(iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

(2) Articles of amendment take effect on the effective date determined in accordance with [section 6].

NEW SECTION. **Section 155. Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(2) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in [section 151].

(3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) a statement that the restated articles consolidate all amendments into a single document; and

(d) if a new amendment is included in the restated articles, the statements required under [section 154] with respect to the new amendment.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(5) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the statements required by subsection (3)(d).

NEW SECTION. **Section 156. Amendment pursuant to reorganization.** (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

NEW SECTION. **Section 157. Effect of amendment.** (1) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability with respect to the corporation as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect to interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder

liability of a shareholder who had interest holder liability with respect to the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the articles of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

NEW SECTION. **Section 158. Authority to amend.** (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power exclusively to the shareholders in whole or part; or

(b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(3) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

NEW SECTION. **Section 159. Bylaw increasing quorum or voting requirement for directors.** (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise; or

(b) if adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the

shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

NEW SECTION. **Section 160. Bylaw provisions relating to election of directors.** (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the votes;

(b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the date that is the earlier of:

(i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

(ii) the date on which an individual is selected by the board of directors to fill the office held by the director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

(iii) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by

shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise;

(b) if adopted by the board of directors, by the board of directors or the shareholders.

NEW SECTION. **Section 161. Definitions -- mergers and share exchanges.** As used in [sections 161 through 168], the following definitions apply:

(1) "Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

(3) "New interest holder liability" means interest holder liability of a person resulting from a merger or share exchange that is:

(a) with respect to an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or

(b) with respect to the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:

(i) the person did not have interest holder liability immediately before the merger or share exchange became effective; or

(ii) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(5) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one or more other corporations or eligible entities are merged.

NEW SECTION. **Section 162. Merger.** (1) By complying with [sections 161 through 168]:

(a) one or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

(b) two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

(2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity, and the merger may then be effected as provided in the other provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

(a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of merger must include:

(a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

(b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property, or any combination;

(e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record; and

(f) any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic rules of the party.

(5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(7) A plan of merger may be amended only with the consent of each party to the merger except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger;

(ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic or foreign nonprofit corporation, or unincorporated entity; or

(iii) any other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 163. Share exchange.** (1) By complying with [sections 161 through 168]:

(a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange; or

(b) all of the shares of one or more classes or series of shares of a domestic corporation may be

acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange.

(2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that corporation or other entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes of applying [sections 161 through 168]:

(a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of share exchange must include:

(a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests;

(b) the terms and conditions of the share exchange;

(c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; and

(d) any other provisions required by the organic law governing the acquired entity or its articles of incorporation or organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable

outside the plan in accordance with [section 3(11)].

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired entity; or

(ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

NEW SECTION. **Section 164. Action on plan of merger or share exchange.** In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be adopted in the following manner:

(1) The plan of merger or share exchange must first be adopted by the board of directors.

(2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their shares to the offeror in response to the offer unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or for the effectiveness of the plan of merger or share exchange.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or eligible entity.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) Subject to subsection (7), separate voting by voting groups is required:

(a) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; or

(ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under [section 152];

(b) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share exchange:

(a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

(b) will not effect a substantive business combination.

(8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) the corporation will survive the merger;

(b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

(c) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the effective date of the merger; and

(d) the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under [section 51(6)].

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domestic corporation:

(a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and

(b) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

(10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of merger or share exchange is not required if:

(a) the plan of merger or share exchange expressly:

(i) permits or requires the merger or share exchange to be effected under this subsection (10); and

(ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f);

(b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

(c) the offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subsection (10)(h);

(d) the offer remains open for at least 10 days;

(e) the offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) the following shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168] and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) shares purchased by the offeror in accordance with the offer;

(ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of them; and

(iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible interests in the offeror, parent, or subsidiary;

(g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to

be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration described in this subsection (10)(h).

(11) As used in subsection (10):

(a) "offer" means the offer referred to in subsection (10)(b);

(b) "offeror" means the person making the offer;

(c) "parent" of an entity means a person that owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(d) shares tendered in response to the offer are considered to have been "purchased" in accordance with the offer at the earliest time that:

(i) the offeror has irrevocably accepted those shares for payment; and

(ii) either:

(A) in the case of shares represented by certificates, the offeror or the offeror's designated depository or other agent has physically received the certificates representing those shares; or

(B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "wholly owned subsidiary" of a person means an entity of which or in which that person owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(12) Unless the articles of incorporation provide otherwise:

(a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

NEW SECTION. **Section 165. Merger between parent and subsidiary or between subsidiaries.** (1) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

(a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power

of each class and series of the outstanding shares or eligible interests that have voting power; or

(b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary.

(2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary's shareholders that the merger has become effective. The notice must include:

(a) a copy of the plan of merger; or

(b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be furnished, upon request and at no cost, to any shareholder of any party to the merger.

(3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers generally.

NEW SECTION. **Section 166. Articles of merger or share exchange.** (1) After a plan of merger has been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)]. The articles must set forth:

(a) the name, jurisdiction of formation, and type of entity of each party to the merger;

(b) the name, jurisdiction of formation, and type of entity of the survivor;

(c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended or if a new domestic corporation is created as a result of the merger:

(i) the amendments to the survivor's articles of incorporation; or

(ii) the articles of incorporation of the new corporation;

(d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or if a new domestic eligible entity is created as a result of the merger:

(i) the amendments to the public organic record of the survivor; or

(ii) the public organic record of the new eligible entity;

(e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and the articles of incorporation;

(f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) as to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized as required by its organic law;

(h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or [section 162(3)]; and

(i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required to become a limited liability partnership, as an attachment.

(2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be signed by the acquired entity and the acquiring entity. The articles must set forth:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible entity that is the acquiring entity; and

(c) a statement that the plan of share exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of shares or eligible interests included in the exchange; and

(ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section 163(3)].

(3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5), the merger or share exchange takes effect on the effective date determined in accordance with [section 6].

(5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created by the merger is the survivor, the merger itself becomes effective on the later of:

(a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become effective; or

(b) the date the articles of merger take effect.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both that organic law and this section.

NEW SECTION. **Section 167. Effect of merger or share exchange.** (1) When a merger becomes effective:

(a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases;

(c) all property owned by and every contract right possessed by each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

(e) the name of the survivor may be but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger;

(g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective;

(h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are converted, and the former holders

of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign corporation;

(i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor; and

(j) if the survivor exists before the merger:

(i) all the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

(ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

(iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under the organic law governing the acquired entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability with respect to an entity as a result of a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of the party or acquired entity:

(i) that were exchanged in the merger or share exchange;

(ii) that were cancelled in the merger; or

(iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, the following provisions apply:

(A) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(B) The provisions of the organic law governing any entity for which the person had that prior interest holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(C) The person has the rights of contribution from other persons that are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(D) The person may not by reason of that prior interest holder liability have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on that interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of the merger is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under [sections 171 through 183].

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the laws of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred

except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

NEW SECTION. **Section 168. Abandonment of merger or share exchange.** (1) After a plan of merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business corporation that is a party to the plan without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment signed by all the parties that signed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

(c) a statement that the merger or share exchange has been abandoned in accordance with this section.

NEW SECTION. **Section 169. Disposition of assets not requiring shareholder approval.** No approval of the shareholders is required, unless the articles of incorporation provide otherwise:

(1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or

otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course of business;

(3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

NEW SECTION. **Section 170. Shareholder approval of certain dispositions.** (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation is conclusively held to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least:

(a) 25% of total assets at the end of the most recently completed fiscal year; and

(b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing operations, in each case for the most recently completed fiscal year.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval by the shareholders of a disposition or for the effectiveness of the disposition.

(4) If a disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must

state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this section.

NEW SECTION. **Section 171. Definitions -- appraisal rights.** For the purposes of [sections 171 through 183], the following definitions apply:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive of another person. For purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

(2) "Beneficial owner" means any person who directly, or indirectly through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares. However, a member of a national securities exchange is not considered a beneficial owner of securities held directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed is held to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation that are

beneficially owned by any member of the group.

(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

(4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(5) "Fair value" means the value of the corporation's shares determined:

(a) immediately before the effectiveness of the corporate action to which the shareholder objects;

(b) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to [section 172(1)(d)].

(6) "Interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) "Interested person" means a person or an affiliate of a person who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

(a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(c) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders, other than:

(i) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section 131]; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director or

governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

(8) "Interested transaction" means a corporate action described in [section 172(1)], other than a merger pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

NEW SECTION. **Section 172. Right to appraisal.** (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 164] or would be required but for the provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) the corporation is a subsidiary and the merger is governed by [section 165];

(b) consummation of a share exchange to which the corporation is a party the shares of which will be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series if:

(i) under the terms of the corporate action approved by the shareholders, the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are to be distributed to shareholders in cash:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of distribution; and

(ii) the disposition of assets is not an interested transaction;

(d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share created;

(e) any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of the board of directors;

(f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication;

(g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143]; or

(h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 143].

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;

(ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more than 10% of those shares; or

(iii) issued by an open-end management investment company registered with the United States securities and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) must be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant

to [section 164(10)], the date of the offer; or

(ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for the holders of any class or series of shares:

(i) who are required by the terms of the corporate action requiring appraisal rights to accept for those shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the corporate action becomes effective; or

(ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189 and 190]:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of the distribution.

(d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) no limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143] or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

(b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within 1 year after the effective date of the amendment if the action would

otherwise afford appraisal rights.

NEW SECTION. **Section 173. Assertion of rights -- nominees -- beneficial shareholders.** (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(a) submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in [section 176(2)(b)(ii)]; and

(b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

NEW SECTION. **Section 174. Notice of appraisal rights.** (1) When any corporate action specified in [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in [section 176].

(3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the

shareholders pursuant to [section 64]:

(a) written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of [sections 171 through 183]; and

(b) written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of [sections 171 through 183].

(4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (2) must be accompanied by:

(a) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of the notice, an income statement for that year, and a cash flow statement for that year, provided that if those financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) the latest interim financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action.

NEW SECTION. **Section 175. Notice of intent to demand payment -- consequences of voting or consenting.** (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the proposed action.

(2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor

of the proposed action with respect to that class or series of shares.

(3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not tender or cause or permit to be tendered any shares of that class or series in response to the offer.

(4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 176. Appraisal notice and form.** (1) If a corporate action requiring appraisal rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2), or (3)]. In the case of a merger under [section 165], the parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be delivered no earlier than the date the corporate action specified in [section 172(1)] became effective and no later than 10 days after that date and must:

(a) supply a form that:

(i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action; and

(ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;

(b) state:

(i) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which may not be earlier than the date by which the corporation must receive the required form under subsection (2)(b)(ii);

(ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than

60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under [section 177] must be received, which must be within 20 days after the date specified in subsection (2)(b)(ii) of this section; and

(c) be accompanied by a copy of [sections 171 through 183].

NEW SECTION. **Section 177. Perfection of rights -- right to withdraw.** (1) A shareholder who receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)]. In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to [section 176(2)(b)(v). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in [section 176(2)], is not entitled to payment under [sections 171 through 183].

NEW SECTION. **Section 178. Payment.** (1) Except as provided in [section 179], within 30 days after

the form required by [section 176(2)(b)(ii)] is due, the corporation shall pay in cash to those shareholders who complied with [section 177(1)] the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) must be accompanied by:

(a) (i) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year or, if those annual financial statements are not reasonably available, reasonably equivalent financial information; and

(ii) the latest interim financial statements of the corporation, if any;

(b) a statement of the corporation's estimate of the fair value of the shares, which must equal or exceed the corporation's estimate given pursuant to [section 176(2)(b)(iii)]; and

(c) a statement that shareholders described in subsection (1) of this section have the right to demand further payment under [section 180] and that if any shareholder does not do so within the time period specified in [section 180(2)], the shareholder is considered to have accepted the payment under subsection (1) of this section in full satisfaction of the corporation's obligations under [sections 171 through 183].

NEW SECTION. **Section 179. After-acquired shares.** (1) A corporation may elect to withhold payment required by [section 178] from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to [section 176(2)(a)].

(2) If the corporation elected to withhold payment under subsection (1) of this section, it shall, within 30 days after the form required by [section 176(2)(b)(ii)] is due, notify all shareholders who are described in subsection (1) of this section:

(a) of the information required by [section 178(2)(a)];

(b) of the corporation's estimate of fair value pursuant to [section 178(2)(b)];

(c) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under [section 180];

(d) that those shareholders who wish to accept the offer shall notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(e) that those shareholders who do not satisfy the requirements for demanding appraisal under [section

180] are considered to have accepted the corporation's offer.

(3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in subsection (2)(e).

NEW SECTION. **Section 180. Procedure if shareholder dissatisfied with payment or offer.** (1) A shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179] who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

NEW SECTION. **Section 181. Judicial appraisal of shares -- court action.** (1) If a shareholder makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180], plus interest.

(2) The corporation shall commence the proceeding in the district court of the county in which its principal office is located or, if its principal office is not located in this state, in the first judicial district.

(3) The corporation shall make all shareholders, regardless of whether they are residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties

must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for the shares, plus interest; or

(b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under [section 179].

NEW SECTION. **Section 182. Court costs -- expenses.** (1) The court in an appraisal proceeding commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(2) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

(b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180], any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit.

NEW SECTION. **Section 183. Other remedies limited.** (1) The legality of a proposed or completed corporate action described in [section 172(1)] may not be contested, and the corporate action may not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) does not apply to a corporate action that:

(a) was not authorized and approved in accordance with the applicable provisions of:

(i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169 and 170];

(ii) the articles of incorporation or bylaws; or

(iii) the resolution of the board of directors authorizing the corporate action;

(b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) is an interested transaction unless it has been recommended by the board of directors in the manner provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as if the interested transaction were a director's conflicting interest transaction; or

(d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

NEW SECTION. **Section 184. Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(i) that none of the corporation's shares has been issued; or

(ii) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

NEW SECTION. **Section 185. Dissolution by board of directors and shareholders.** (1) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution unless:

(i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum

for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

NEW SECTION. **Section 186. Articles of dissolution.** (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date that dissolution was authorized; and

(c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(2) The articles of dissolution take effect on the effective date determined in accordance with [section 6]. A corporation is dissolved on the effective date of its articles of dissolution.

(3) For purposes of [sections 184 through 192], "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

NEW SECTION. **Section 187. Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days after its effective date.

(2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a

statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(g) The articles of revocation of dissolution take effect on the effective date determined in accordance with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.

(h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

NEW SECTION. **Section 188. Effect of dissolution.** (1) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) making distributions of its remaining assets among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities;

(c) subject its directors or officers to standards of conduct different from those prescribed in [sections 93 through 133];

(d) change:

(i) quorum or voting requirements for its board of directors or shareholders;

(ii) provisions for selection, resignation, or removal of its directors or officers or both; or

(iii) provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of

dissolution; or

(g) terminate the authority of the registered agent of the corporation.

(3) A distribution in liquidation under this section may be made only by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

NEW SECTION. **Section 189. Known claims against dissolved corporation.** (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

NEW SECTION. **Section 190. Other claims against dissolved corporations.** (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) be:

(i) published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located; or

(ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation's website;

(b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the first publication date of the notice:

(a) a claimant who was not given written notice under [section 189];

(b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

NEW SECTION. **Section 191. Court proceedings.** (1) A dissolved corporation that has published a notice under [section 190] may file an application with the district court of the county where its principal office is located or, if its principal office is not located in this state, of the first judicial district for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [section 190(3)].

(2) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and those claims may not be enforced against a shareholder who received assets in liquidation.

NEW SECTION. **Section 192. Director duties.** (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment of or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191] may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are barred or satisfied under [sections 189 through 191].

NEW SECTION. **Section 193. Grounds for administrative dissolution.** The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, ~~taxes,~~ interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

NEW SECTION. **Section 194. Procedure for and effect of administrative dissolution.** (1) ~~If the secretary of state determines that~~ ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL COMPILE A LIST OF CORPORATIONS FOR WHICH one or more grounds exist under [section 193] for dissolving a corporation, AND the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

NEW SECTION. **Section 195. Reinstatement following administrative dissolution.** (1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated; AND

(c) state that the corporation's name satisfies the requirements of [section 39]~~; and~~

~~(d) contain a certificate from the department of revenue reciting that all taxes imposed pursuant to Title 15 have been paid~~.

(2) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION FOR REINSTATEMENT:

(A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE

15 HAVE BEEN PAID;

(B) A FILING FEE, WHICH MUST BE SET AND DEPOSITED BY THE SECRETARY OF STATE IN ACCORDANCE WITH 2-15-405; AND

(C) ALL ANNUAL REPORTS NOT YET FILED WITH THE SECRETARY OF STATE AND RELATED FEES AND PENALTIES.

~~(2)~~(3) If the secretary of state determines that the application contains the information, DOCUMENTS, AND FEES required by ~~subsection (1)~~ SUBSECTIONS (1) AND (2) and that the information ~~is~~, DOCUMENTS, AND FEES ARE COMPLETE AND correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

~~(3)~~(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

NEW SECTION. **Section 196. Appeal from denial of reinstatement.** (1) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under [section 45] with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 197. Grounds for judicial dissolution.** (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of the shares.

(3) For the purposes of this section:

(a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) the term "shareholder" in subsection (2) means a record shareholder, a beneficial shareholder, and

a voting trust beneficial owner.

NEW SECTION. **Section 198. Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under [section 201] and accompanied by a copy of [section 201].

NEW SECTION. **Section 199. Receivership or custodianship.** (1) Unless an election to purchase has been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) the receiver:

(A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private

sale; and

(B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state;

(ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(b) The receiver or custodian has other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

NEW SECTION. **Section 200. Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 197] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance with [sections 189 and 190].

NEW SECTION. **Section 201. Election to purchase in lieu of dissolution.** (1) Unless the transfer is altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow.

If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and number of shares owned by the petitioner and the name of and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares on the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or another date the court finds appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase on terms and conditions the court finds appropriate, which may include payment of the purchase price in installments when necessary in the interests of equity, provision for security to ensure payment of the purchase price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes or series as far as practicable and may direct that holders of a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning

shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the order becomes final.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

NEW SECTION. **Section 202. Deposit with state treasurer.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person or the person's representative that amount.

NEW SECTION. **Section 203. Foreign corporations -- governing law.** (1) The law of the jurisdiction of formation of a foreign corporation governs:

(a) the internal affairs of the foreign corporation; and

(b) the interest holder liability of its shareholders.

(2) A foreign corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

(3) Registration of a foreign corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic corporation may not engage in or exercise in this state.

NEW SECTION. **Section 204. Registration to do business in this state.** (1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (4), THE failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A CONTRACT BETWEEN THE STATE OF MONTANA, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND A FOREIGN CORPORATION THAT HAS FAILED TO REGISTER TO DO BUSINESS AS REQUIRED UNDER [SECTION 207(4)] IS VOIDABLE BY THE STATE, THE CONTRACTING STATE AGENCY, OR THE CONTRACTING POLITICAL SUBDIVISION.

~~(4)~~(5) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

~~(5)~~(6) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through 214].

NEW SECTION. **Section 205. Foreign registration statement.** To register to do business in this state, a foreign corporation shall deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the foreign corporation and state:

(1) the corporate name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(2) the foreign corporation's jurisdiction of formation;

(3) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers;

(6) a brief description of the nature of its business to be conducted in this state; and

(7) a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.

NEW SECTION. **Section 206. Amendment of foreign registration statement.** A registered foreign corporation shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its jurisdiction of formation unless its registration is determined to have been withdrawn under [section 210] or transferred under [section 212]; or

(3) an address required by [section 205(3)].

NEW SECTION. **Section 207. Activities not constituting doing business.** (1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that IS COMPLETED WITHIN 30 DAYS AND THAT is not in the course of ~~similar~~ REPEATED transactions OF A SIMILAR NATURE; and

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign

corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

(4) A FOREIGN CORPORATION IS TRANSACTING BUSINESS WITHIN THE MEANING OF SUBSECTION (1) IF IT ENTERS INTO A CONTRACT, INCLUDING A CONTRACT ENTERED INTO PURSUANT TO TITLE 18, WITH THE STATE OF MONTANA, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND MUST REGISTER TO DO BUSINESS UNDER [SECTIONS 203 THROUGH 214] BEFORE ENTERING INTO THE CONTRACT. THIS SUBSECTION DOES NOT APPLY TO CONTRACTS FOR GOODS FULLY PREPARED OR SERVICES FULLY PERFORMED OUT OF STATE FOR DELIVERY OR USE IN THIS STATE.

NEW SECTION. **Section 208. Noncomplying name of foreign corporation.** (1) A foreign corporation whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with [section 39] by filing a foreign registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212] setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do business in this state with an alternate name, a foreign corporation shall do business in this state under:

(a) the alternate name;

(b) the foreign corporation's name, with the addition of its jurisdiction of formation; or

(c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

(2) If a registered foreign corporation changes its name after registration to a name that does not comply with [section 39], it may not do business in this state until it complies with subsection (1) of this section by amending its registration statement to adopt an alternate name that complies with [section 39].

NEW SECTION. **Section 209. Withdrawal of registration of registered foreign corporation.** (1) A registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

(a) the name of the foreign corporation and its jurisdiction of formation;

(b) that the foreign corporation is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign corporation revokes the authority of its registered agent in this state;

(d) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(e) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(f) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 210. Withdrawal upon domestication or conversion to certain domestic entities.** A registered foreign corporation that domesticates to a domestic business corporation or converts to a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership is considered to have withdrawn its registration on the effective date of that event.

NEW SECTION. **Section 211. Withdrawal upon dissolution or conversion to nonfiling entities.** (1) A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic or foreign nonfiling entity and must state:

(a) in the case of a foreign corporation that has completed winding up:

(i) its name and jurisdiction of formation;

(ii) that the foreign corporation withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iii) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(iv) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from

the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(v) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation; or

(b) in the case of a foreign corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting foreign corporation and its jurisdiction of formation;

(ii) the type of the nonfiling entity to which it has converted and its name and jurisdiction of formation;

(iii) that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iv) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(v) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(vi) additional information that may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 212. Transfer of registration.** (1) If a registered foreign corporation merges into a nonregistered foreign corporation or converts to a foreign corporation required to register with the secretary of state to do business in this state, the foreign corporation shall deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or converted foreign corporation and must state:

(a) the name of the registered foreign corporation and its jurisdiction of formation before the merger or conversion;

(b) the name of the surviving or converted foreign corporation and its jurisdiction of formation after the

merger or conversion and, if the name does not comply with [section 39], an alternate name adopted pursuant to [section 208]; and

(c) the following information regarding the surviving or converted foreign corporation after the merger or conversion:

(i) the street and mailing addresses of the principal office of the foreign corporation and, if the law of the foreign corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office.

(2) On the effective date of a transfer of registration statement as determined in accordance with [section 6], the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign corporation into which it has merged or to which it has been converted.

NEW SECTION. **Section 213. Administrative termination of registration.** (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

~~(2) The secretary of state may terminate the registration of a registered foreign corporation by:~~

~~(a) filing a certificate of termination; and~~

~~(b) delivering a copy of the certificate of termination to the foreign corporation's registered agent or, if the foreign corporation does not have a registered agent, to the foreign corporation's principal office.~~

(2) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL COMPILE A LIST OF

REGISTERED FOREIGN CORPORATIONS FOR WHICH ONE OR MORE GROUNDS EXIST UNDER SUBSECTION (1) FOR TERMINATING ITS REGISTRATION AND SHALL SERVE THE REGISTERED FOREIGN CORPORATION WITH WRITTEN NOTICE OF THE DETERMINATION UNDER [SECTION 45].

(3) IF THE REGISTERED FOREIGN CORPORATION DOES NOT CORRECT EACH GROUND FOR TERMINATION OR DEMONSTRATE TO THE REASONABLE SATISFACTION OF THE SECRETARY OF STATE THAT EACH GROUND FOR TERMINATION DETERMINED BY THE SECRETARY OF STATE DOES NOT EXIST WITHIN 60 DAYS AFTER THE NOTICE IS DELIVERED, THE SECRETARY OF STATE MAY TERMINATE THE REGISTRATION OF A REGISTERED FOREIGN CORPORATION BY ISSUING A CERTIFICATE OF TERMINATION. The certificate of termination must state~~:~~

~~(a)~~ the effective date of the termination, which must be not less than ~~90~~ 60 days after the secretary of state delivers the ~~copy of the certificate of termination~~ NOTICE as prescribed in subsection (2)(b)~~; and~~

~~(b) the grounds for termination under subsection (1)~~.

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination ~~unless before that date the foreign corporation cures each ground for termination stated in the certificate of termination. If the foreign corporation cures each ground, the secretary of state shall file a statement that the certificate of termination is withdrawn~~.

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

NEW SECTION. **Section 214. Action by attorney general.** The attorney general may maintain an action to enjoin a foreign corporation from doing business in this state in violation of [sections 1 through 221].

NEW SECTION. **Section 215. Corporate records.** (1) A corporation shall maintain the following records:

(a) its articles of incorporation as currently in effect;

(b) any notices to shareholders referred to in [section 3(11)(e)] specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in [section 3(11)(e)];

(c) its bylaws as currently in effect;

(d) all written communications within the past 3 years to shareholders generally;

(e) minutes of all meetings of and records of all actions taken without a meeting by its shareholders, its board of directors, and board committees established under [section 109];

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 221].

(2) A corporation shall maintain all annual financial statements prepared for the corporation for its last 3 fiscal years or any shorter period of existence and any audit or other reports with respect to those financial statements.

(3) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(4) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the address of and the number and class or series of shares held by each shareholder. Nothing in this subsection requires the corporation to include in the record the electronic mail address or other electronic contact information of a shareholder.

(5) A corporation shall maintain the records specified in this section in a manner that allows them to be made available for inspection within a reasonable time.

NEW SECTION. **Section 216. Inspection rights of shareholders.** (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 215(1)], excluding minutes of meetings of and records of actions taken without a meeting by the corporation's board of directors and board committees established under [section 109], if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) the financial statements of the corporation maintained in accordance with [section 215(2)];

(b) accounting records of the corporation;

(c) excerpts from minutes of any meeting of or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with [section 215(1)]; and

(d) the record of shareholders maintained in accordance with [section 215(4)].

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) the shareholder's demand is made in good faith and for a proper purpose;

(b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) the records are directly connected with the shareholder's purpose.

(4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (2).

(5) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different from the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made the information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide this information does not affect the validity of action taken at the meeting.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(7) This section does not affect:

(a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of production of records described in subsection (2) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (3) of this section.

(8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

NEW SECTION. **Section 217. Scope of inspection right.** (1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under [section 216].

(2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records

under [section 216] by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under [section 216(2)(d)] by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(4) The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of those costs.

NEW SECTION. **Section 218. Court-ordered inspection.** (1) If a corporation does not allow a shareholder who complies with [section 216(1)] to inspect and copy any records required by that section to be available for inspection, the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder who complies with [section 216(2)] to inspect and copy the records required by that section, the shareholder, if the shareholder also complies with [section 216(3)], may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under [section 216(2)], it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

(a) a reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or

(b) required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

NEW SECTION. **Section 219. Inspection rights of directors.** (1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a

board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

NEW SECTION. **Section 220. Financial statements for shareholders.** (1) Upon the written request of a shareholder, a corporation shall deliver or make available to the requesting shareholder by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the corporation for which annual financial statements have been prepared. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for the specified period, the corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported on by a public accountant, the report must also be delivered or made available to the requesting shareholder.

(2) A corporation shall deliver or make available and provide written notice of availability of the financial statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a written request to the corporation.

(3) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(4) Notwithstanding the provisions of subsections (1) through (3):

(a) as a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of the financial statements; and

(b) the corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

(5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (2) within 5 business days of delivery of the request to the corporation:

(a) The requesting shareholder may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(b) If the court orders delivery of or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(c) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

(d) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(e) If the court orders delivery of or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

NEW SECTION. **Section 221. Annual report for secretary of state.** (1) Each domestic corporation shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the corporation;

(b) the street and mailing address of its registered office and the name of its registered agent at that office in this state;

(c) the street and mailing address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state for filing an annual report that sets forth:

(a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(b) the foreign corporation's jurisdiction of formation;

(c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(d) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(e) the names and business addresses of its directors and principal officers; and

(f) a brief description of the nature of its business conducted in this state.

(3) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15 of subsequent years.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing ~~and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the notice from the secretary of state becomes effective as determined in accordance with [section 15], it is considered timely filed~~. THE CORRECTED REPORT MUST BE FILED BY APRIL 15 TO BE CONSIDERED TIMELY FILED.

Section 222. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider

of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity~~, as defined in 35-1-113,~~ that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 223. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation -- application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or the officer's agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include,

at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation ~~in 35-1-216~~;

(iii) the information required by 35-7-105(1);

(iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 224. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ Title 35, upon request

of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana."

Section 225. Section 20-5-320, MCA, is amended to read:

"20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not

required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid

as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

Section 226. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure -- rulemaking authority. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in ~~35-1-310~~ [section 39].

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state."

Section 227. Section 32-1-112, MCA, is amended to read:

"32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of ~~Title 35, chapter 1,~~ [sections 1 through 221] apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with ~~Title 35, chapter 1~~ [sections 1 through 221].

(2) The provisions of [sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216] ~~35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10,~~ do not apply to banks."

Section 228. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to

organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in ~~Title 35, chapter 1~~ [sections 1 through 221]. The articles of incorporation must set forth:

(a) the information required by ~~35-1-216(1)~~ [section 28(1)];

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in ~~35-1-216(2)~~ [section 28(2)].

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 229. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in ~~Title 35, chapter 1, part 11~~ [sections 215 through 221]."

Section 230. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock -- rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing,

and public services. A bank may also, with the department's approval, purchase interests in an entity~~, as defined in 35-1-113,~~ that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 231. Section 33-3-103, MCA, is amended to read:

"33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935~~ [sections 184 through 188] apply to the voluntary dissolution of a domestic insurer."

Section 232. Section 33-3-215, MCA, is amended to read:

"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8,~~ [sections 171

through 183] as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13."

Section 233. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution. (1) At least 60 days before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-931~~ [section 184], the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required ~~by 35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the

resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 234. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under ~~Title 35, chapter 1, part 9, or~~ Title 35, chapter 2, part 7, or [sections 184 through 202] apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 235. Section 33-3-603, MCA, is amended to read:

"33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under ~~35-1-934 or~~ 35-2-724 or [section 187], the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 236. Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the

commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners, including electronically if required by the commissioner, and completed in accordance with instructions provided by the national association of insurance commissioners and the national association of insurance commissioners' accounting practices and procedures manual.

(5) All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at the time of licensure.

(6) (a) The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.

(b) Each risk retention group shall disclose the determinations of independence to the commissioner annually.

(c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.

(ii) A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's immediate family, or any business with which the person is affiliated:

(A) has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group, compensation or payment of any item of value that accounts for either 5% of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;

(B) has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or

(C) has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.

(7) (a) A material service provider contract with a risk retention group or its renewal:

(i) may not exceed 5 years;

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for

underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of:

(i) the integrity of the financial statements;

(ii) the board's compliance with legal and regulatory requirements; and

(iii) the qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(d) discuss policies with respect to risk assessment and risk management;

(e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(f) review with the independent auditor any audit problems or difficulties and management's response;

(g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(h) require the external auditor to rotate the lead or coordinating audit partner having primary

responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and

(i) report regularly to the board of directors.

(11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.

(b) For the purposes of this subsection (11), the information must include:

(i) the process by which the directors are elected by the owner or the insureds;

(ii) qualification standards, responsibilities, and compensation for directors;

(iii) director access to management and, as necessary and appropriate, to independent advisors;

(iv) director orientation and continuing education;

(v) management succession policies and procedures; and

(vi) annual board performance evaluation policies and procedures.

(12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.

(b) The code must address:

(i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ director's conflicting interest transactions as defined in [section 129];

(ii) confidentiality;

(iii) fair dealing;

(iv) protection and proper use of risk retention group assets;

(v) compliance with all applicable laws, rules, and regulations; and

(vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

Section 237. Section 33-12-104, MCA, is amended to read:

"33-12-104. Authorization of investments by board of directors. (1) An insurer's board of directors

shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in ~~35-1-418~~ [section 111]."

Section 238. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the

individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction

with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member, employee, officer, director, or stockholder of a business entity who is acting as an insurance producer in this state has obtained a license;

(e) (i) with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority~~ registration under ~~35-1-1312~~ [section 11] or filed articles of incorporation under ~~35-1-220~~ [section 29].

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 239. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of

authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first ~~obtains from~~ registers with the secretary of state ~~a certificate of authority~~ to transact business in this state as a foreign corporation under ~~35-1-1028~~ [section 204].

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain~~,~~ at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner

determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

Section 240. Section 35-1-1403, MCA, is amended to read:

"35-1-1403. Purpose. (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under ~~35-1-114~~ [section 35] and any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with subsection (2).

(2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the

identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote."

Section 241. Section 35-1-1406, MCA, is amended to read:

"35-1-1406. Benefit corporation governance -- liability. (1) A director of a public benefit corporation shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or

group referred to in this subsection (2) over any other factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with this part is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

Section 242. Section 35-1-1407, MCA, is amended to read:

"35-1-1407. Conversion to benefit corporation. (1) A corporation may become a benefit corporation under this part by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving

corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if the conversion is approved by the other entity by at least the minimum status vote."

Section 243. Section 35-1-1408, MCA, is amended to read:

"35-1-1408. Termination -- reorganization -- other actions affecting benefit corporation. (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in ~~35-1-827~~ [section 172]."

Section 244. Section 35-2-826, MCA, is amended to read:

"35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under ~~35-1-309, 35-1-311,~~ 35-2-306, ~~or~~ 35-2-307, [section 40], or [section 41];

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is

incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 245. Section 35-4-503, MCA, is amended to read:

"35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in ~~Title 35, chapter 6~~ [sections 193 through 196]."

Section 246. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service of process. (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments or a true copy certified by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under ~~35-1-1028~~ [section 205] and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that

service of process may be made upon some person, a citizen of this state whose principal place of business is designated in the certificate. Service of process, when made upon the agent, is valid service on the business trust."

Section 247. Section 35-6-101, MCA, is amended to read:

"35-6-101. Applicability to corporations presently in default. (1) The secretary of state may initiate procedures consistent with this chapter to dissolve nonprofit corporations organized under Title 35, chapters 2 and 3 ~~that have been in default prior to July 1, 1977~~.

(2) Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections 1 through 221] is governed by [sections 193 through 196].

(3) As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized under Title 35, chapters 4 and 9, or [sections 1 through 221]."

Section 248. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution -- grounds. (1) Any domestic corporation organized under Title 35, chapters 2 and 3, ~~whether for profit or not for profit,~~ may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 249. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution -- procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or~~ 35-2-729~~, whichever is appropriate,~~ is applicable to liquidate the property and assets if necessary."

Section 250. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through 35-1-943 or~~ 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 251. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain

business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by ~~35-1-308~~ [section 39].

(4) Contests over names registered under this section are governed by ~~35-1-310~~ [section 39]."

Section 252. Section 35-9-103, MCA, is amended to read:

"35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 253. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of

shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of ~~35-1-628~~ [section 57] and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 254. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the

result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under ~~Title 35, chapter 1, part 8,~~ [sections 161 through 168] or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 255. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208."

Section 256. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-416~~ [section 93]."

Section 257. Section 35-9-303, MCA, is amended to read:

"35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

Section 258. Section 35-9-402, MCA, is amended to read:

"35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 259. Section 35-9-404, MCA, is amended to read:

"35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through 35-1-935~~ [sections 184 through 188].

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders

of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 260. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section 197].

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has ~~dissenters'~~ appraisal rights under this chapter or ~~35-1-826 through 35-1-839~~ [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have."

Section 261. Section 35-9-504, MCA, is amended to read:

"35-9-504. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 262. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine."

Section 263. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) ~~Such~~ The persons desiring to incorporate ~~must~~ shall prepare, sign, acknowledge, and file a petition with the clerk of the district court of the

county in which the lands or the greater portion of the lands included in the petition are situate, ~~such~~ the petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is to be formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which ~~shall~~ may not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. ~~Such~~ The directors or trustees ~~shall~~ must at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for ~~such~~ the incorporation or district, with a description of the lands ~~which~~ that each owns and that are proposed to be submitted to ~~said~~ the corporation or district and the character of the ~~same~~ lands and their production, ~~also~~ as well as a consent of the owners to submit the lands to the provisions ~~hereof~~ of this section;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing ~~the same~~ them in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) ~~Such~~ The petition ~~shall~~ must be accompanied by a map giving location of the lands sought to be included in ~~such~~ the corporation or district, but nothing ~~herein to be~~ in this subsection may be construed as requiring ~~such~~ the lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of ~~such~~ the corporation or district, ~~shall~~ must be filed with the petition."

Section 264. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association."

Section 265. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in ~~35-1-216~~ [section 28]; and

(b) provisions for classification of members in a cooperative.

(3) A cooperative's articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 266. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge."

Section 267. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed $450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations~~, as defined in 35-1-113,~~ may not apply."

Section 268. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to [sections 1 through 221] or Title 85, chapter 6, part 1, ~~or Title 35, chapter 1, part 2,~~ for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to ~~Title 35, chapter 1, part 2,~~ [sections 1 through 221] or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

NEW SECTION. **Section 269. Repealer.** The following sections of the Montana Code Annotated are repealed:

35-1-112. Short title.
35-1-113. Definitions.
35-1-114. Purposes.
35-1-115. General powers.
35-1-116. Notice.
35-1-117. Ultra vires.
35-1-118. Reservation of power to amend or repeal.
35-1-119. Liability of and to ostensible corporations.
35-1-215. Incorporators.
35-1-216. Articles of incorporation.
35-1-217. Filing requirements.
35-1-218. Facsimile filing -- requirements -- liability.
35-1-219. Effective time and date of document.
35-1-220. Incorporation.
35-1-221. Correcting filed document.
35-1-222. Organization of corporation.
35-1-225. Authority to amend.
35-1-226. Amendment by board of directors.
35-1-227. Amendment by board of directors and shareholders.
35-1-228. Voting on amendments by voting groups.
35-1-229. Amendment before issuance of shares.
35-1-230. Articles of amendment.

35-1-231. Restated articles of incorporation.
35-1-232. Amendment pursuant to reorganization.
35-1-233. Effect of amendment.
35-1-234. Bylaw amendment by board of directors or shareholders.
35-1-235. Extension of duration of corporation.
35-1-236. Bylaws.
35-1-237. Emergency bylaws.
35-1-238. Bylaw increasing quorum or voting requirement for shareholders.
35-1-239. Bylaw increasing quorum or voting requirement for directors.
35-1-308. Corporate name.
35-1-309. Reserved name.
35-1-310. Contest of registration of name -- penalty.
35-1-311. Registered name of foreign corporation.
35-1-416. Requirement for and duties of board of directors.
35-1-417. Qualifications of directors.
35-1-418. General standards for directors.
35-1-419. Number and election of directors.
35-1-420. Election of directors by certain classes of shareholders.
35-1-421. Terms of directors generally.
35-1-422. Staggered terms for directors.
35-1-423. Resignation of directors.
35-1-424. Removal of directors.
35-1-425. Removal of directors by judicial proceeding.
35-1-426. Vacancy on board.
35-1-427. Compensation of directors.
35-1-428. Penalty for signing false document.
35-1-431. Meetings.
35-1-432. Action without meeting.
35-1-433. Notice of meeting.
35-1-434. Waiver of notice.

35-1-435.	Quorum -- voting.
35-1-439.	Committees.
35-1-441.	Required officers.
35-1-442.	Duties of officers.
35-1-443.	Standards of conduct for officers.
35-1-444.	Resignation and removal of officers.
35-1-445.	Contract rights of officers.
35-1-451.	Definitions.
35-1-452.	Authority to indemnify.
35-1-453.	Mandatory indemnification.
35-1-454.	Advance for expenses.
35-1-455.	Court-ordered indemnification.
35-1-456.	Determination and authorization of indemnification.
35-1-457.	Indemnification of officers, employees, and agents.
35-1-458.	Insurance.
35-1-459.	Application.
35-1-461.	Definitions.
35-1-462.	Judicial action.
35-1-463.	Directors' action.
35-1-464.	Shareholders' action.
35-1-516.	Annual meeting.
35-1-517.	Special meeting.
35-1-518.	Court-ordered meeting.
35-1-519.	Action without meeting.
35-1-520.	Notice of meeting.
35-1-521.	Waiver of notice.
35-1-522.	Record date.
35-1-523.	Shareholders' list for meeting.
35-1-524.	Voting entitlement of shares.
35-1-525.	Proxies.

35-1-526. Shares held by nominees.
35-1-527. Corporation's acceptance of votes.
35-1-528. Quorum and voting requirements for voting groups.
35-1-529. Action by single and multiple voting groups.
35-1-530. Greater quorum or voting requirements.
35-1-531. Voting for directors -- cumulative voting.
35-1-532. Voting trusts.
35-1-533. Voting agreements.
35-1-534. Liability of shareholders.
35-1-535. Shareholders' preemptive rights.
35-1-541. Definitions.
35-1-542. Standing.
35-1-543. Demand.
35-1-544. Stay of proceedings.
35-1-545. Dismissal.
35-1-546. Discontinuance or settlement -- notice.
35-1-547. Payment of expenses.
35-1-548. Applicability to foreign corporations.
35-1-550. Number of shareholders.
35-1-618. Authorized shares.
35-1-619. Terms of class or series determined by board of directors.
35-1-620. Issued and outstanding shares.
35-1-621. Fractional shares.
35-1-622. Subscription for shares before incorporation.
35-1-623. Issuance of shares.
35-1-624. Share dividends.
35-1-625. Share options.
35-1-626. Form and content of certificates.
35-1-627. Shares without certificates.
35-1-628. Restriction on transfer or registration of transfer of shares and other securities.

35-1-629.	Expense of issue.
35-1-630.	Corporation's acquisition of its own shares.
35-1-712.	Distributions to shareholders.
35-1-713.	Liability for unlawful distributions.
35-1-813.	Merger.
35-1-814.	Share exchange.
35-1-815.	Action on plan.
35-1-816.	Articles of merger or share exchange.
35-1-817.	Effect of merger or share exchange.
35-1-818.	Merger of subsidiary.
35-1-819.	Merger or share exchange with foreign corporation.
35-1-820.	Shareholder agreements.
35-1-822.	Sale of assets in regular course of business -- mortgage of assets.
35-1-823.	Sale of assets other than in regular course of business.
35-1-826.	Definitions.
35-1-827.	Right to dissent.
35-1-828.	Dissent by nominees and beneficial owners.
35-1-829.	Notice of dissenters' rights.
35-1-830.	Notice of intent to demand payment.
35-1-831.	Dissenters' notice.
35-1-832.	Duty to demand payment.
35-1-833.	Share restrictions.
35-1-834.	Payment.
35-1-835.	Failure to take action.
35-1-836.	After-acquired shares.
35-1-837.	Procedure if shareholder dissatisfied with payment or offer.
35-1-838.	Court action.
35-1-839.	Court costs and attorney fees.
35-1-931.	Dissolution by incorporators or initial directors.
35-1-932.	Dissolution by board of directors and shareholders.

35-1-933.	Articles of dissolution.
35-1-934.	Revocation of dissolution.
35-1-935.	Effect of dissolution.
35-1-936.	Known claims against dissolved corporation.
35-1-937.	Unknown claims against dissolved corporation.
35-1-938.	Grounds for judicial dissolution.
35-1-939.	Discretion of court to grant relief other than dissolution.
35-1-940.	Procedure for judicial dissolution.
35-1-941.	Receivership or custodianship.
35-1-942.	Decree of dissolution.
35-1-943.	Deposit with state treasurer.
35-1-944.	State dissolution or withdrawal certificate.
35-1-1026.	Authority to transact business required.
35-1-1027.	Consequences of transacting business without authority.
35-1-1028.	Application for certificate of authority.
35-1-1029.	Amended certificate of authority.
35-1-1030.	Effect of certificate of authority.
35-1-1031.	Corporate name of foreign corporation.
35-1-1037.	Withdrawal of foreign corporation.
35-1-1038.	Grounds for revocation.
35-1-1039.	Procedure for and effect of revocation.
35-1-1040.	Appeal from revocation.
35-1-1104.	Annual report for secretary of state.
35-1-1106.	Corporate records.
35-1-1107.	Inspection of records by shareholders.
35-1-1108.	Scope of inspection right.
35-1-1109.	Court-ordered inspection.
35-1-1110.	Financial statement for shareholders.
35-1-1111.	Other reports to shareholders.
35-1-1206.	Fees for filing, copying, and services.

35-1-1307. Secretary of state -- powers -- rulemaking.
35-1-1308. Forms.
35-1-1309. Filing duty of secretary of state.
35-1-1310. Appeal from secretary of state's refusal to file document.
35-1-1311. Evidentiary effect of copy of filed document.
35-1-1312. Certificate of existence or authority.
35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

NEW SECTION. **Section 270. Transition -- application to existing domestic corporations.** [Sections 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221] that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

NEW SECTION. **Section 271. Codification instruction.** (1) [Sections 1 through 26] are intended to be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1, apply to [sections 1 through 26].

(2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

(3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

(4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

(5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

(6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part 6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

(7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

(8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

(9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

(10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14, part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

(11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14, part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

(12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14, part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

(13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14, part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

(14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14, part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

(15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14, part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

(16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14, part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].

NEW SECTION. **Section 272. Saving clause.** (1) Except as to procedural provisions, [sections 1 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].

NEW SECTION. **Section 273. Severability.** If a part of [sections 1 through 221] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **SECTION 274. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JUNE 1, 2020.

NEW SECTION. **Section 275. Applicability -- existing foreign corporations.** A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] is subject to [sections 1 through 221], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221].

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill #	SB0325	Title:	Create the Montana Business Corporation Act
Primary Sponsor:	Fitzpatrick, Steve	Status:	As Introduced

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☒Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2020 Difference	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: SB 325 creates the Montana Business Corporation Act. State agencies are either excluded in law from the provisions under SB 325 or will have no fiscal impact from this legislation. As a result, SB 325 has no fiscal impact on the state.

FISCAL ANALYSIS

Assumptions:

Office of the Secretary of State

1. The Office of the Secretary of State can make the necessary programming changes as required in this bill without incurring any additional costs.

Department of Revenue

2. SB 325 creates the Montana Business Corporation Act. This act requires corporations to file documents with the Office of the Secretary of State and moves code from Title 35, chapter 1, MCA, to Title 35, chapter 14, MCA.
3. This bill will not impact how the department administers tax law and has no fiscal impact to the department.

Department of Administration

4. SB325 revises incorporation laws of non-governmental entities. The sections within the bill that relate to health coverage amend Title 33, MCA. As outlined in 2-18-812(7), MCA, except as otherwise provided in Title 33, chapter 18, part 9, MCA, the provisions of Title 33 do not apply to the state health plan.
5. The only changes to the statutes affecting the Banking and Financial Institutions Divisions are section and code number references; no additional services, expenditures, or revenues are anticipated as a result of SB 325.
6. Risk Management and Tort Defense is exempt (under 33-1-102(8), MCA) from the sections of the bill that relate to insurance.

Technical Notes:

Office of the Secretary of State

1. Sections added in this legislation conflict with the current Model Registered Agents Act (MORAA) laws.
2. The June 15th date for domestic and foreign corporation involuntary intent notices conflicts with the September 1st date set in Title 35, Chapter 6, MCA.
3. The September 15th date for dissolutions and revocations conflicts with the foreign entity date of November 1st and domestic entity date of December 1st date set in Title 35, Chapter 6, MCA.
4. Not requiring back annual reports to be filed for domestic reinstatements conflicts with Title 35, Chapter 6, MCA, which states that back annual reports need to be included with reinstatements filings.

Sponsor's Initials	3/19/19 *Date*	TL *Budget Director's Initials*	3/19/19 *Date*

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill #	SB0325	Title:	Create the Montana Business Corporation Act
Primary Sponsor:	Fitzpatrick, Steve	Status:	As Amended

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2020 Difference	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: SB 325, as amended, creates the Montana Business Corporation Act. State agencies are either excluded in law from the provisions under SB 325 or will have no fiscal impact from this legislation. As a result, SB 325 has no fiscal impact on the state.

FISCAL ANALYSIS

Assumptions:

Office of the Secretary of State

1. The Office of the Secretary of State can make the necessary programming changes required in this bill without incurring any additional costs.

Department of Revenues

2. SB 325, as amended, creates the Montana Business Corporation Act. This act requires corporations to file documents with the Office of the Secretary of State and moves code from Title 35, chapter 1, MCA, to Title 35, chapter 14, MCA.
3. The amended bill is effective June 1, 2020.
4. SB 325 will not impact how the department administers tax law and has no impact to the department.

Department of Administration

5. SB 325, as amended, revises incorporation laws of non-governmental entities. The sections within the bill that relate to health coverage amend Title 33, MCA. As outlined in 2-18-812 (7), MCA, except as otherwise provided in Title 33, chapter 18, part 9, MCA, the provisions of Title 33 do not apply to the state health plan.

6. The only changes to the statutes affecting the Banking and Financial Institutions Division are section and code number references; no additional services, expenditures, or revenues are anticipated as a result of SB 325.
7. Risk Management and Tort Defense is exempt (under 33-1-102(8), MCA) from the sections of the bill that relate to insurance.

NO SPONSOR SIGNATURE

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*
		TL	3/28/19

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill #	SB0325	Title:	Create the Montana Business Corporation Act
Primary Sponsor:	Fitzpatrick, Steve	Status:	As Amended on the House Floor

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2020 Difference	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Other	$647,097	$240,037	$243,638	$247,293
Revenue:				
General Fund	$0	$0	$0	$0
Other	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: SB 325, as amended, requires a one-time programming change to the Secretary of State's registry information system, estimated to cost approximately $400,000 in FY 2020. There will also be increases in postage and printing costs related to sending the paper notifications required in this legislation.

FISCAL ANALYSIS

Assumptions:

Office of the Secretary of State

1. The cost of the one-time programming change to enhance the Secretary of State's registry information system to allow for electronic and paper filings is estimated at $400,000.
2. The Office of the Secretary of State has transitioned from a primarily paper-based system to an online web available system that has all business entity types filing their paperwork electronically.
3. SB325 requires changes to the Secretary of State's registry information system to treat for-profit corporations and other entity types in a different manner than all other business entities. This bill includes entity types that can convert/merge into and out of a for-profit corporation.

4. Programming changes would include changes to online filing forms to separate the for-profit corporation entity type so that it would allow for an option to file using paper or online. Changes would also need to be made in the system utilized by Secretary of State staff to allow for the filing of these initial filings, amendments, and annual reports for profit corporations. Notifications and batch jobs may also need to be changed based on requirements.
5. HB 325, as amended, would require additional commercial office space to accommodate 7.00 FTE at 300 square feet per FTE with a market rate of $19 per square foot. If space were available on the Capitol Complex, it would be available at $10.54 per square foot in FY 2020 and $10.736 per square foot in FY 2021. This amount has been inflated by 1.5% for FY 2022 and FY 2023.
6. Seven computer jacks to be installed in the additional office space would be $300 per jack in FY 2020.
7. Seven additional phone lines would need to be added at a cost of $332.52/year per line. This amount has been inflated by 1.5% for FY 2022 and FY 2023.
8. The purchase of an additional scanner to process the paper filings would be $4,960 in FY 2020.
9. The increase in operating expenses for additional printing and postage related to sending paper notifications would be $197,809 for FY 2020 and FY 2021. This amount has been inflated by 1.5% for FY 2022 and FY 2023.

	FY 2020 Difference	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference
Fiscal Impact:				
Expenditures:				
Operating Expenses	$642,137	$240,037	$243,638	$247,293
Equipment	$4,960	$0	$0	$0
TOTAL Expenditures	$647,097	$240,037	$243,638	$247,293
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
Other	$647,097	$240,037	$243,638	$247,293
TOTAL Funding of Exp.	$647,097	$240,037	$243,638	$247,293
Revenues:				
General Fund (01)	$0	$0	$0	$0
Other	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	$0	$0	$0
Other	($647,097)	($240,037)	($243,638)	($247,293)

NO SPONSOR SIGNATURE

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*
		TL	4/16/19

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill #	SB0325	Title:	Create the Montana Business Corporation Act
Primary Sponsor:	Fitzpatrick, Steve	Status:	As Amended on the House Floor

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2020 Difference	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: SB 325, as amended, creates the Montana Business Corporation Act. State agencies are either excluded in law from the provisions under SB 325 or will have no fiscal impact from this legislation. As a result, SB 325 has no fiscal impact to the state.

FISCAL ANALYSIS

Assumptions:

Office of the Secretary of State

1. The Office of the Secretary of State can make the necessary programming changes, as required in SB 325, without incurring any additional costs.

Department of Revenue

2. SB 325, as amended, creates the Montana Business Corporation Act. This act requires corporations to file documents with the Office of the Secretary of State and moves code from Title 35, chapter 1, MCA, to Title 35, chapter 14, MCA.
3. The amended bill is effective June 1, 2020.
4. This bill will not impact how the department administers tax law and has no fiscal impact to the department.

Department of Administration

5. SB 325, as amended, revises incorporation laws of non-governmental entities. The sections within the bill that relate to health coverage amend Title 33, MCA. As outlined in 2-18-812(7), MCA, except as otherwise provided in Title 33, chapter 18, part 9, MCA, the provisions of Title 33 do not apply to the state health plan.
6. The only changes to the statutes affecting the Banking and Financial Institutions Division are section and code references; no additional services, expenditures, or revenues are anticipated as a result of SB 325.
7. Risk Management and Tort Defense is exempt (under 33-1-102(8), MCA) from the sections of the bill that relate to insurance.

Sponsor's Initials	Date	Budget Director's Initials	Date
SF	4/24/19	TL	4/24/19

MINUTES

MONTANA SENATE
66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on March 19, 2019 at 8:30 AM, in Room 422 Capitol

ROLL CALL

Members Present:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Dee Brown, Vice Chair (R)
Sen. Sue Malek, Vice Chair (D)
Sen. Carlie Boland (D)
Sen. Jason W. Ellsworth (R)
Sen. Terry Gauthier (R)
Sen. Jason D. Small (R)
Sen. Frank Smith (D)
Sen. Gordon Vance (R)
Sen. Gene Vuckovich (D)

Members Excused: None

Members Absent: None

Staff Present: Linda Keim, Committee Secretary
Jameson Walker, Legislative Services Division

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 617, 3/13/2019; SB 325, 3/13/2019; SB 330, 3/13/2019; SR 43, 3/13/2019

08:30:37 Chairman Fitzpatrick

HEARING ON HB 617

Opening Statement by Sponsor:

08:31:30 Rep. Barry Usher (R), HD 40, opened the hearing on HB 617. Generally revise franchise laws and automobile franchise laws.

EXHIBIT(bus56a01)

Proponents' Testimony:

08:37:13 Bruce Knudsen, executive vice president, Montana Auto Dealers Association (MTADA)
08:39:02 Don Kaltschmidt, MTADA
08:43:16 Jim Stanger, owner, domestic and import franchise, Montana Auto Dealers Association
08:48:19 Eric Henricksen, family business owner, Montana Auto Dealers Association
08:51:06 Robbie Smith, family owned business, Billings and Hardin, Montana Auto Dealers Association
08:53:57 Matt Waller, former domestic auto dealer, Northern Ford
08:55:35 Stuart Doggett, lobbyist, Montana Manufactured Housing and RV Dealers
08:56:10 Bill Dee, owner, new and used automobile dealership, Dee Motors, Anaconda
08:58:45 Scott Reichner, lobbyist, Montana Auto Dealers Association

Opponents' Testimony:

09:01:27 Jonathan Emmanual, assistant general counsel, Reynolds and Reynolds Company (RRC)
09:06:51 John MacDonald, lobbyist, Alliance for Automobile Manufacturers (AAM)
09:26:16 Glenn Oppel, CDK Global

EXHIBIT(bus56a02)

Informational Testimony:

09:27:36 Joann Loehr, Legislative Services Bureau chief, Motor Vehicle Division, Department of Justice

Questions from Committee Members and Responses:

09:28:01 Sen. Brown
09:31:43 Mr. MacDonald, AAM
09:33:10 Sen. Brown
09:34:10 Mr. Waller, self
09:37:06 Mr. Kaltschmidt, MTADA
09:37:15 Sen. Ellsworth
09:40:27 Mr. Emmanuel, RRC
09:41:04 Sen. Ellsworth
09:41:48 Mr. Waller, redirect
09:42:04 Sen. Ellsworth
09:45:20 Mr. Smith, self
09:45:54 Sen. Vance
09:49:22 Mr. Kaltschmidt
09:49:43 Sen. Malek
09:53:22 Mr. MacDonald

09:54:50 Sen. Gauthier
09:59:21 Mr. MacDonald
10:00:34 Sen. Gauthier
10:01:11 Mr. Stanger, self
10:01:23 Sen. Smith
10:02:08 Mr. Knudsen, MTADA
10:02:31 Sen. Malek
10:03:15 Mr. Dee, self
10:07:23 Sen. Gauthier
10:07:44 Mr. Dee

Closing by Sponsor:
10:08:2 Rep. Usher
EXHIBIT(bus56a03)

10:14:10 Chairman Fitzpatrick

Chairman Fitzpatrick passed the duties of the Chair to Vice Chair Brown.

10:14:57 Chair Brown

HEARING ON SR 43

Opening Statement by Sponsor:
10:15:00 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SR 43. Confirm Governor's appointee for Director, Dept. of Commerce.

Proponents' Testimony:
10:16:11 Tara Rice, nominee
10:20:12 Steve Arveschoug, executive director, Big Sky Economic Development; president, Montana Economic Development Association (MEDA)
10:21:34 Tim Burton, executive director, Montana League of Cities and Towns

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
10:23:18 Chair Brown
10:23:55 Mr. Arveschoug, MEDA
10:25:32 Chair Brown
10:26:05 Ms. Rice, nominee
10:27:26 Sen. Ellsworth
10:28:21 Ms. Rice
10:28:57 Sen. Gauthier
10:29:55 Ms. Rice
10:30:34 Chair Brown
10:30:38 Sen. Malek
10:33:38 Ms. Rice
10:34:21 Sen. Gauthier

10:35:49 Ms. Rice
10:36:13 Chair Brown
10:37:23 Ms. Rice

Closing by Sponsor:
10:38:53 Sen. Fitzpatrick

10:39:04 Chair Brown

HEARING ON SB 325

Opening Statement by Sponsor:
10:39:25 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 325. Create the Montana Business Corporation Act.

Proponents' Testimony:
10:42:07 Kristen Juras, committee chair, Business, Estate, Trust, Tax, and Real Property Section, Montana State Bar (MSB)
EXHIBIT(bus56a04)
EXHIBIT(bus56a05)

10:54:42 Vincent Kalafat, attorney, Crowley Fleck PLLP
EXHIBIT(bus56a06)

11:01:47 Joe DeFilippis, chief legal counsel, Office of the Secretary of State (SOS)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
11:03:13 Sen. Ellsworth
11:03:23 Mr. DeFilippis, SOS defer
11:04:28 Ms. Juras, MSB
11:05:30 Chair Brown
11:05:51 Ms. Juras
11:06:32 Chair Brown
11:06:59 Mr. Kalafat
11:07:31 Sen. Malek
11:08:48 Mr. Kalafat
11:09:21 Sen. Malek
11:11:41 Sen. Fitzpatrick defer
11:12:38 Ms. Juras
11:12:42 Sen. Ellsworth
11:14:00 Mr. Kalafat
11:14:10 Sen. Malek
11:20:04 Ms. Juras

Closing by Sponsor:
11:20:23 Sen. Steve Fitzpatrick

11:21:22 Chair Brown

Sen. Fitzpatrick resumed the duties of the chair.

11:23:10 Chairman Fitzpatrick

HEARING ON SB 330

Opening Statement by Sponsor:
11:23:32 Sen. Mark Blasdel (R), SD 4, opened the hearing on SB 330. Authorize sports gambling act.

Proponents' Testimony:
11:26:41 Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA)
EXHIBIT(bus56a07)

11:31:07 Danielle Boyd, William Hill Company
11:36:13 Travis Woltermann, vice president, Golden Entertainment, Inc.; vice president, Montana Coin Machine Operators Association (MCMOA)
11:37:48 Neil Peterson, executive director, Gaming Industry Association of Montana
11:42:32 John Iverson, Montana Tavern Association

Opponents' Testimony: None

Informational Testimony:
11:51:32 Angela Nunn, administrator, Gambling Control Division, Department of Justice (DOJ)
11:52:31 Brad Longcake, executive director, Montana Council on Problem Gambling (MCPG)
EXHIBIT(bus56a08)

Questions from Committee Members and Responses:
11:54:08 Sen. Brown
11:54:41 Ms. Nunn, DOJ
11:55:12 Sen. Brown
11:55:31 Sen. Blasdel
11:56:21 Sen. Ellsworth
11:57:36 Mr. Longcake, MCPG
11:58:28 Sen. Malek
11:58:31 Ms. Nunn
11:58:51 Sen. Malek
11:58:55 Mr. Woltermann, MCMOA defer
12:02:32 Ms. Wiggers, MCMOA
12:03:35 Chairman Fitzpatrick
12:03:44 Sen. Brown
12:04:12 Ms. Wiggers
12:05:50 Sen. Ellsworth

Closing by Sponsor:
12:06:10 Sen. Blasdel

ADJOURNMENT

Adjournment: 12:07 PM

_____
Linda Keim, Secretary

lk

Additional Documents:

EXHIBIT(bus56aad.pdf)

BUSINESS & LABOR
EXHIBIT NO. 4
DATE 3/19/19
BILL NO. SB 325

Memorandum (1)

Date: March 19, 2019
To: Senate Business, Labor & Economic Affairs Committee Members
From: Kristen G. Juras, Business Committee Chair
Business, Estate, Trust, Tax, and Real Property (BETTR) Section of Montana State Bar
Re: SB 325: Revisions to Montana Business Corporation Act

The existing Montana Business Corporation Act was enacted 28 years ago in 1991, before the widespread use of electronic communications and the explosive growth of interstate commerce driven by the internet. The 1991 legislation was based upon the American Bar Association's 1984 Model Business Corporation Act. The Model Business Corporation Act has been amended by the American Bar Association (ABA) many times since its promulgation in 1984. Montana has adopted only a handful of those amendments.

In 2010, the ABA began a thorough review and revision of the Model Act and its official comments. This effort resulted in the adoption and publication of the 2016 Revision of the Model Business Corporation Act. The 2016 Revision is based on the 1984 version upon which Montana law is based and incorporates most of the amendments to the Model Act adopted thereafter. It has eliminated inconsistent terminology and outdated provisions.

In 2016, members of the Business, Estate, Trust, Tax, and Real Property (BETTR) Section of the Montana State Bar and several law school professors began studying the 2016 Revision of the Model Business Corporation Act for potential adoption in Montana. We have worked closely with the Business Services Division of the Secretary of State's office.

These efforts culminated in SB 325, which is based upon the American Bar Association's 2016 Revision of the Model Business Corporation Act. We have carefully reviewed the 2016 Model Act with current Montana law and have made several variations from the Model Act that we felt best represented Montana corporate practice. As one simple example, we have kept Montana's long-standing April 15 deadline for filing annual reports rather than adopting the Model Act's due date of April 1. Variations to language of the Model Act were also made during the legislative drafting process in compliance with the Montana Legislative Services Division's Bill Drafting Manual, none of which are intended to be substantive. A separate memorandum will be submitted into the record outlining the more important substantive variations of SB 325 from the 2016 Model Business Corporation Act, with a brief explanation of the reasoning behind the variation.

Each section of the 2016 Model Business Corporation Act is followed by an official comment that amplifies and explains the purpose, rationale, and operation of the statute, often giving examples. Although the official comments are not incorporated into SB 325, it is the intent of the drafters of SB 325 that the Montana courts refer to the official comments to resolve any ambiguities in the interpretation or application of the provisions of SB 325 to the extent the

official comments refer to provisions of the 2016 Model Business Corporation Act that have not been substantively modified by SB 325.

SB 325 has been endorsed by the BETTR Section of the State Bar, comprised of more than 200 attorneys practicing business law in the state, and the Montana State Bar Board of Trustees. Most of the substantive provisions of corporate law remain the same. SB 325 introduces several improvements to Montana's Business Corporation Act, including provisions that facilitate electronic filings and communications, statutory procedures for correction of "defective" corporate actions, clearer standards of conduct for directors and officers, and new rules that greatly simplify mergers between corporations and other types of entities, such as limited liability companies.

Although many of the provisions of SB 325 set forth default rules for the governance of a corporation, these default rules may be modified by shareholders or directors in the corporation's governing documents. Some provisions of SB 325 set forth mandatory rules that may not be modified, such as the provisions providing shareholders the right to review certain corporate documents (section 216(6)).

In reviewing the authorized version of SB 325 last week, the office of the secretary of state and members of the BETTR Section identified amendments to SB 325 that will be sponsored by Senator Fitzpatrick. Some of those amendments correct drafting errors. Substantive amendments to SB 325 are discussed in this memorandum.

Following is a summary of the **major changes** that SB 325 makes to current corporate law.

Sections 1 through 26: General Provisions

- The general provisions contained in sections 1 through 26 have been amended to accommodate the use of electronic means to transmit and file various corporate documents and to incorporate terminology from the Uniform Electronic Transmissions Act adopted by the Montana legislature in 2001 (MCA §§ 30-18-101 et seq.)
- Section 3(9) allows documents to be filed with the office of the secretary of state electronically.
    - At the request of the office of the secretary of state, Senator Fitzpatrick will propose an amendment that all documents required to be filed with the secretary of state must be filed electronically. The secretary of state may authorize exceptions to the electronic filing requirement.
- Section 3(11) provides rules for incorporating into documents "extrinsic facts" ascertainable outside of filed documents. For example, a provision of the articles of incorporation may establish an interest rate based on the interbank loan rate established by the Federal Open Market Committee.

- Section 14 adds several new definitions to clarify the application of various provisions of the Act, including definitions related to electronic records and transmissions.
- Section 15 allows communications and notices to be transmitted electronically and specifies rules governing electronic transmissions, including a requirement that the parties must consent to the use of electronic transmissions for notices.
    - At the request of the office of the secretary of state, Senator Fitzpatrick will propose an amendment to Section 15(4) that provides a "deemed" irrevocable consent to electronic transmissions for all corporations who have filed documents electronically with the secretary of state.
- Sections 19 to 26 provide new procedures that allow for the ratification of defective corporate actions.

Sections 27-34: Incorporation

- Section 34 specifically authorizes the use of forum selection clauses for "internal corporation claims" in Articles of Incorporation. For example, a Montana corporation that operates in Conrad, Montana may establish in its articles of incorporation or bylaws the Pondera County district court as the venue for bringing claims against its directors for breach of fiduciary duty.
- Section 34 prohibits mandatory arbitration of internal corporation claims.

Sections 35-45: Purposes and Powers; Corporate Name; Office and Agent

- No major changes from existing law.
    - In drafting SB 325, we inadvertently failed to coordinate Sections 42-44 governing registered agents with the Model Registered Agents Act of title 35, chapter 7. Senator Fitzpatrick is proposing amendments to sections 42-44 to make these sections consistent with the Model Registered Agents Act.

Sections 46-60: Shares and Distributions

- Section 57 adds as a proper subject for a shareholders' agreement an agreement to alter, restrict or eliminate the application of section 201, a new provision granting to the corporation and other shareholders an election to purchase shares of a shareholder who files a petition for judicial dissolution.

Sections 61-92: Shareholders

- Currently, 10% of shareholders may demand a special shareholders' meeting. Section 62 permits a provision in the articles of incorporation setting a higher or lower percentage than 10%, but no higher than 25%.
- Currently, shareholders may act by written consent in lieu of a shareholder meeting only if unanimous. Section 64 now authorizes a corporation to add to its articles of incorporation a provision allowing shareholder action by consent if signed by holders of

outstanding shares having not less than the minimum number of votes necessary to authorize the action if it were voted on at a meeting. Absent such a provision in the articles, unanimous written consent is still required.

- Section 78 changes the current default rule of cumulative voting for directors to non-cumulative voting unless the articles state otherwise.
- Section 91 provides a procedure allowing shareholders to seek appointment of a receiver or custodian where directors are deadlocked or threatening irreparable harm to the corporation, or if directors are acting fraudulently and irreparable injury is threatened. Under prior law, a custodian or receiver could only be appointed in connection with a judicial dissolution proceeding.
- Section 92 establishes a procedure for judicial resolution of disputes with respect to directors or officers, committee members, or the results or validity of shareholder votes.

Sections 93-133: Directors and Officers

- Section 94 clarifies the scope and operation of any qualifications for directors adopted by a corporation in its articles of incorporation or bylaws.
- Section 95 eliminates the restriction that the size of the board cannot be increased or decreased by more than 30% without shareholder approval.
- Section 98 allows staggered terms for any size board, eliminating the current restriction that staggered terms are only allowed for boards of nine or more directors.
- The standards of conduct for directors contained in section 111 have not been significantly changed. However, as a result of some court decisions that have confused standards of conduct for directors with standards of liability for directors, section 112 has been added to clarify that there is a separate and distinct standard of liability for directors. Not all breaches of a Section 111 standard of care necessarily lead to director liability.
- The standards of conduct for officers established under Section 116 has been amended to apply to all officers, rather than just those with "discretionary authority" under prior law, and clarifies an officer's right to delegate. Section 116(4) explains that an officer's breach of a standard of conduct does not necessarily lead to liability and refers to the principles of section 112 for the standard of liability.
- Section 122 has amended procedures governing the advancement of expenses to a director or officer under the indemnification provisions of the Act.
- Section 133 provides approval mechanisms and safe-harbors for directors considering involvement in a business opportunity that might be deemed to be a corporate opportunity.

Sections 134-148: Domestication and Conversion

- Sections 134-148 add new, simplified procedures (i) for changing the state of incorporation and (ii) for converting unincorporated entities into corporations and

corporations into unincorporated entities. A separate memorandum prepared by Vincent Kalafat discusses these provisions in more detail.

Sections 149-160: Amendment of Articles and Bylaws

- Under existing law, the default rule requires an amendment to the articles of incorporation on which shareholders are entitled to vote to be approved by two-thirds of the shareholders entitled to vote on the amendment (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 151 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for approval of amendments to a majority of the shareholders entitled to vote (an absolute majority). Section 151 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.
- Section 160 enables corporations to change the plurality vote default rule for the election of directors through amendments to its bylaws or articles of incorporation. Under current law, a change from plurality voting can only be authorized in the articles of incorporation.

Sections 161-168: Mergers and Share Exchanges

- Under existing law, the default rule requires a merger or share exchange to be approved by two-thirds of the shareholders entitled to vote on the merger or share exchange (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 164 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for approval of mergers and share exchanges to a majority of the shareholders entitled to vote (an absolute majority). Section 164 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 169-170: Disposition of Assets

- Under existing law, the default rule requires a sale of assets outside of the ordinary course of business to be approved by two-thirds of the shareholders entitled to vote on the disposition (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 170 reduces the current default rule of an "absolute" two-thirds shareholder voting

requirement for approval of dispositions to a majority of shareholders entitled to vote thereon (an absolute majority vote). Section 170 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Chapter 171-183: Appraisal (or Dissenter's) Rights

- No major changes from existing law.

Sections 184-202: Dissolution

- Under existing law, the default rule requires a voluntary corporate dissolution to be approved by two-thirds of the shareholders entitled to vote on the dissolution (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 185 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for dissolution to a majority of shareholders entitled to vote thereon (an absolute majority vote). Section 185 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.
- Section 190 adds procedures regarding the disposition of unknown claims against a corporation that voluntarily dissolves, including a 3-year period after publication of a notice of dissolution within which a proceeding to enforce an unknown claim generally must be filed.
- Chapter 6 of Title 35 currently provides rules governing involuntary administrative dissolution if a domestic corporation fails to file required reports or is otherwise not in compliance with the Act. For domestic profit corporations, these administrative dissolution procedures have been moved from chapter 6, title 35 to sections 193-195 of the Montana Business Corporation Act. It was not the intent of the drafters to change the current procedures or time frames for administrative dissolution of domestic corporations.
    - Under current law (MCA 35-6-104), letters are sent on September 1 to all domestic corporations that have not filed annual reports or otherwise are not in compliance with the Act. If corrective action is not taken within the following 90 days, the secretary of state sends out a notice of administrative dissolution on December 1. A corporation may seek reinstatement within 5 years of the notice of dissolution if it complies if it satisfies certain conditions, including filing an application for reinstatement and all delinquent annual reports.
    - SB 325 inadvertently altered some of the current procedures and time frames relating to administrative dissolution of domestic corporations. To avoid the cost

of alterations to its current system, the secretary of state has requested that the Act maintain current time frames governing administrative dissolution of domestic corporations. Senator Fitzpatrick is proposing amendments to sections 193-195 to keep the current procedures and time frames in place.

- Section 201 is a new provision allowing the corporation or other shareholders an option to purchase the shares of a shareholder who petitions for dissolution. The articles of incorporation, bylaws, or a shareholder's agreement (as referenced in section 57) may alter, eliminate, or restrict these statutory buy-out provisions. For example, a shareholder's agreement may provide a purchase price and method of payment that applies in the event a shareholder petitions for judicial dissolution or it may eliminate the election to purchase in the event a shareholder petitions for judicial dissolution.

Sections 203-214: Foreign Corporations

- As under current law, section 204 requires a foreign corporation to register to do business with the Montana secretary of state before transacting business in Montana. However, SB 325 has changed certain terms relating to foreign corporations, including new references to a "certificate of registration" rather than a "certificate of authority" and "termination of registration" rather than "revocation of a certificate of authority."
- Section 207 sets forth activities that are not considered "transacting business" in Montana and do not require registration of a foreign corporation.
    - We did not intend to change existing law regarding these exceptions, but inadvertently omitted some of the exceptions. Senator Fitzpatrick's proposed amendments to sections 204 and 207 correct this oversight, including a requirement that all foreign corporations who enter contracts for the provision of sales or services to the State of Montana be registered, unless the contracts are wholly performed outside of the state.
- Section 213 provides rules governing the secretary of state's termination of a foreign corporation's registration.
    - Under current law (MCA 35-1-1039), letters are sent on September 1 to all registered foreign corporations that have not filed annual reports or otherwise are not in compliance with the Act. If corrective action is not taken within the following 60 days, the secretary of state sends out a notice of administrative dissolution on November 1.
    - SB 325 inadvertently altered some of the current procedures and time frames relating to administrative termination of the registration of foreign corporations. To avoid the cost of alterations to its current system, the secretary of state has requested that the Act maintain current time frames governing administrative termination of a foreign corporation's registration. Senator Fitzpatrick is proposing amendments to section 213 to keep the current procedures and time frames in place.

Sections 215-221: Records and Reports

- Section 219 grants to directors the right to inspect certain corporate records.
- Under current law, annual reports must be filed by April 15. If the annual report contains an error or is not complete, the secretary of state returns it to the corporation. Any corrections to the annual report must be filed by April 15 to be considered timely.
    - SB 325 inadvertently provided 30 days within which to return a corrected report. At the request of the secretary of state and to avoid the cost of reconfiguring its system and lost revenues, Senator Fitzpatrick is proposing an amendment to section 219 requiring corrected reports to be filed by April 15 to be considered timely filed.

Sections 222-269: Amendment of Other Statutory Provisions; Repealer

- Sections 222 through 268 revise other statutes to refer to the new code sections and for consistency with the provisions of SB 325.
- Section 269 repeals the existing Montana Business Corporation Act codified at title 35, chapter 1.

Sections 270-274: Transition Provisions; Effective Date

- Section 270 applies the provisions of SB 325 to all domestic corporations in existence upon its effective date.
- Section 271 provides codification instructions.
- Section 272 is a savings clause that preserves any pending actions or rights accrued before the effective date.
- Section 273 makes any invalid provisions of SB 325 severable.
- Section 274 clarifies that any foreign corporations that have registered prior to the effective date do not need to re-register.
- Effective date: To allow it sufficient time to implement the changes provided in this Act, the office of the secretary of state has requested a delayed effective date of June 1, 2020 (after the April 15, 2020 annual report filing deadline). The office will be required to make changes to its system and its forms to implement SB 325 and needs sufficient time to develop and test these changes prior to implementing them for its customers.

BUSINESS & LABOR
EXHIBIT NO. 5
DATE 3/19/19
BILL NO. SB 325

Memorandum (2)

Date: March 19, 2019
To: Senate Business, Labor & Economic Affairs Committee Members
From: Kristen G. Juras, Business Committee Chair
Business, Estate, Trust, Tax, and Real Property (BETTR) Section of Montana State Bar
Re: Variations in SB 325 from the 2016 ABA Model Business Corporation Act

This Memorandum supplements my Memorandum of March 19, 2019 explaining the general purposes of SB 325 and its revision of the Montana Business Corporation Act. SB 325 is based upon the American Bar Association's 2016 Revision of the Model Business Corporation Act. A task force of comprised of members of the Business, Estate, Trust, Tax, and Real Property (BETTR) Section of the Montana State Bar, law school professors, and members of the Business Services Division of the office of the secretary of state have worked together to draft SB 325. We did not adopt the 2016 Revision of the Model Business Corporation Act wholesale. We have carefully reviewed the 2016 Model Act with current Montana law and have made several substantive variations from the Model Act that we felt best represented Montana corporate practice. The purpose of this memorandum is to identify and explain the most important of those variations.

Variations to language of the Model Act were also made during the legislative drafting process in compliance with the Montana Legislative Services Division's Bill Drafting Manual. The drafting changes made in compliance with the Bill Drafting Manual are not intended to be substantive.

The section numbers used in SB 325 have been altered and do not correspond to the section numbers used in the 2016 Revision of the Model Business Corporation Act. For example, section 5 of SB 325 corresponds to Section 1.22 of the 2016 Model Act.

<u>Sections 1-26 Variations from Model Act (General Provisions)</u>

- Section 5 of SB 325 varies from corresponding section 1.22 of the 2016 Model Act, which contains a list of fees for various filings, statements, and other secretary of state services. As under current law, section 5 of SB 325 does not list fees but instead allows the secretary of state to set fees to be published in the Administrative Rules of Montana, thus avoiding the need for legislative action to change fees.
- Section 8 of SB 325 varies from corresponding section 1.25 of the 2016 Model Act, which sets forth the filing duties of the secretary of state. Consistent with current Montana law, section 8(5) was added to SB 325 to allow the secretary of state to correct errors in UCC financing statements caused by a filing officer.
- Rather than adopting the penalties for false documents set forth in section 1.29 of the 2016 Model Act, Section 12 of SB 325 uses the existing language of MCA § 35-1-428(1)

regarding penalties for false statements contained in any documents filed with the secretary of state, and a warning about the penalty for false statements on any forms provided by the secretary of state.

- Consistent with current law, Section 13(2) of SB 325 adds a provision clarifying that the secretary of state may adopt rules necessary to perform his or her duties, including establishing fees. This language is not contained in corresponding Section 1.30 of the 2016 Model Act.
- Section 14 of SB 325 alters some of the definitions contained in Section 1.40 of the 2016 Model Act.
    - We have clarified that "expenses" includes attorneys' fees.
    - We have added limited liability partnerships and limited liability limited partnerships to the organizations identified as "unincorporated entities."

Sections 39-41 Variations from Model Act (Corporate Name)

- Consistent with existing law, section 39 of SB 325 has added subsection (2)(h) (which does not appear in section 4.01 of the 2016 Model Act) requiring a corporate name to be distinguishable from any assumed business name, trademark, or service mark registered with the secretary of state.
- Consistent with existing law, section 39 of SB 325 has added subsection (4) (which does not appear in section 4.01 of the 2016 Model Act) to expand the instances in which a corporation can use a name that is not otherwise distinguishable in connection with mergers, reorganizations and acquisitions or with permission of the other entity.
- Consistent with existing law, in section 39(2) we provide a 120-day grace period after the effective date of a dissolution before the name of a dissolved entity becomes available to another entity. This provision is not found in section 4.01 of the 2016 Model Act.

Sections 42-45 Variations from Model Act (Office and Agent)

- Because Montana has adopted the Montana Registered Agents Act (title 35, chapter 7) that applies consistent rules to registered agents of all incorporated and unincorporated entities registered with the secretary of state, sections 42-45 of SB 325 will be amended to incorporate where appropriate the provisions of the Montana Registered Agents Act and eliminate inconsistent provisions contained in sections 5.01, 5.02 and 5.03 of the 2016 Model Act.

Sections 46-60 Variations from Model Act (Shares and Distributions)

- Section 57 of SB 325 allows shareholder agreements to alter, restrict or eliminate the new procedure under section 201 of SB 325 that provides an election to purchase shares of a shareholder who files a petition for judicial dissolution. Section 14.34 of the 2016 Model Act is silent as to whether the buy-out procedures in a judicial dissolution may be

altered by agreement, and we believed it was best to clarify that shareholders do have the right to alter the provisions of section 201 by agreement.

Sections 93-133 Variations from Model Act (Directors and Officers)

- Section 97 of SB 325 clarifies corresponding Section 8.05 of the 2016 Model Act by specifically allowing the bylaws to vary the default rule that an appointment to a director vacancy expires at the next shareholders' meeting (allowing, for example, the appointee to complete the remaining 2 years of a 3-year term).
- Section 104 of SB 325 clarifies corresponding section 8.20 of the 2016 Model Act by allowing directors to request distribution of minutes to directors.
- Section 112 of SB 325 is a new section that establishes standards of liability for directors. At common law, the courts have developed the business judgment rule that protects directors from liability if they satisfy the elements of the business judgment rule. Corresponding Section 8.31 of the 2016 Model Act does not mention the business judgment rule, and we have added language to Section 112 clarifying that it does not intend to eliminate or alter the application of the business judgment rule.
- Section 117 of SB 325 allows an officer's resignation to simply be submitted to the "corporation" rather than specifying (as does corresponding Section 8.43 of the 2016 Model Act) one or more specific persons to whom it must be delivered.
- Section 119 provides definitions that apply to sections 119-128 of SB 325 governing indemnification of directors and officers. We clarify the definitions of corresponding Section 8.50 of the 2016 Model Act as follows:
    - Clarify that "corporations" include predecessor entities;
    - Provide separate definitions for "director" and "officer" rather than combining them as the Model Act does;
    - Include attorney's fees in the definition of "liability."

Sections 134-148 Variations from Model Act (Domestication and Conversion)

- Consistent with current law, section 135 of SB 325 excludes certain corporations from the domestication and conversion provisions, including banks, trust companies, building and loan associations, credit unions, and insurance companies. Corresponding section 9.02 of the 2016 Model Act contemplates that each state adopting the Act may exclude from the domestication and conversion provisions corporations regulated under different statutes.
- Section 135 of SB 325 also clarifies that these procedures do not apply to corporations that convert to a benefit corporation under MCA § 35-1-1407.
- Section 145 of SB 325 requires approval of a plan of conversion by a majority of shareholders entitled to vote on the plan (an absolute majority). Corresponding section 9.32 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the plan. Section 145 allows a corporation to increase

or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 149-160 Variations from Model Act (Amendment of Articles and Bylaws)

- Section 151 of SB 325 requires approval of any amendments to the articles of incorporation that shareholders are entitled to vote on by a majority of shareholders entitled to vote on the amendment (an absolute majority). Corresponding section 10.03 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the amendment. Section 151 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 161-168 Variations from Model Act (Mergers and Share Exchanges)

- Section 164 of SB 325 requires approval of any merger or share exchange by a majority of shareholders entitled to vote on the merger or exchange (an absolute majority). Corresponding section 11.04 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the amendment. Section 164 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.
- Section 165 of SB 325 adds a provision to corresponding Section 11.05 of the 2016 Model Act Merger clarifying that although shareholders do not need to vote on mergers between parents and subsidiaries, the corporation must provide notice of any mergers or share exchanges with subsidiaries or between subsidiaries to shareholders, including a copy of the plan or a summary of the plan and a statement that the entire plan may be obtained upon request.

Sections 169-170 Variations from Model Act (Disposition of Assets)

- Section 170 of SB 325 requires approval of any disposition of assets outside of the ordinary course of business by a majority of shareholders entitled to vote on the disposition (an absolute majority). Corresponding section 12.02 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the amendment. Section 170 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 184-202 Variations from Model Act (Dissolution)

- Section 190 of SB 325 and corresponding section 14.07 of the 2016 Model Act provide procedures for the disposition of unknown claims against a corporation at the time it dissolves. Section 190 provides that in lieu of a publication in a newspaper (the only method prescribed in corresponding section 14.07), a dissolving corporation may elect to publish notice of dissolution on its website for 30 consecutive days. Section 190 also specifies that claims are barred within three years of the first date of publication.
- Sections 193-194 of SB 325 intend to retain existing procedures and time frames for the administrative dissolution of domestic corporations, and (with proposed amendments to sections 193-194) have altered corresponding language in corresponding sections 14.01 and 14.02 of the 2016 Model Act to achieve that result.
- Consistent with current law, section 195 of SB 325 provides a five-year period within which to apply for reinstatement rather than the two-year period provided by corresponding section 14.22 of the 2016 Model Act. Section 195 also retains similar reinstatement procedures as provided under existing law.
- Section 201 of SB 325 provides a new procedure in judicial dissolutions that allows a corporation or other shareholders to purchase the shares of a shareholder seeking judicial dissolution. Section 201 clarifies corresponding section 14.34 of the 2016 Model Act by stating that the term "fair value" used in section 201 has the same definition as that term is used in determining "fair value" under section 171 governing appraisal rights. The purpose is to avoid any confusion as to whether valuation discounts may be used to determine "fair value" under section 201 – they may not.
- Section 201 of SB 325 also references the ability of shareholders to enter into an agreement under section 57 that alters, eliminates, or restricts the buy-out provisions of Section 201.

Sections 203-214 Variations from Model Act (Foreign Corporations)

- Section 205 of SB 325 adds a provision to corresponding 15.03 of the 2016 Model Act requiring a foreign corporation to state in its application for registration that the corporation has complied with the laws of its jurisdiction and is in existence in that jurisdiction.
- Section 207 of SB 325 retains existing provisions of Montana law describing activities that do not constitute transacting business in Montana rather than adopting the language of corresponding Section 15.05 of the 2016 Model Act. An amendment to section 207 will clarify our intent to require foreign corporations contracting to provide goods or services to the State of Montana must register with the secretary of state unless the goods are fully prepared or services fully performed outside of Montana.

Sections 215-221) Variations from Model Act (Records and Reports)

- Section 221 of SB 325 retains the current due date of April 15 for annual reports rather than adopting the April 1 due date proposed under 16.21 of the 2016 Model Act.

BUSINESS & LABOR
EXHIBIT NO. 6
DATE 3/19/19
BILL NO. SB 325

WRITTEN TESTIMONY OF VINCENT G. KALAFAT, MEMBER OF THE BUSINESS, ESTATE, TRUST, TAX, AND REAL PROPERTY (BETTR) SECTION OF THE MONTANA STATE BAR, BEFORE THE SENATE BUSINESS LABOR & ECONOMICS COMMITTEE OF THE 66TH MONTANA LEGISLATURE ON MARCH 19, 2019, IN SUPPORT OF SB 325 (REVISIONS TO MONTANA BUSINESS CORPORATION ACT)

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today in support of SB 325.

My name is Vincent Kalafat. I am a resident of Park City, Montana, and a tax and business attorney with Crowley Fleck PLLP. I am also a member of the Business, Estate, Trust, Tax, and Real Property (BETTR) Section of the Montana State Bar and I am testifying today on behalf of the BETTR Section in support of SB 325.

Montana's existing corporate statutes in Title 35, Chapter 1, were enacted in 1991 largely based on the 1984 Revised Mode Business Corporation Act from the American Bar Association. When Montana originally adopted the Model Act in 1991, the Internet was still in its infancy, e-mail was just beginning to gain steam, and the use of real-time video communications like we now have at our fingertips with FaceTime and Skype was largely limited to the area of sci-fi. In addition to the significant technology developments, the conduct of business and general corporate law has changed dramatically since 1991. The American Bar Association has promulgated amendments to the Model Act, but Montana has fallen behind in keeping up with those changes. Now is the perfect opportunity for our State to adopt SB 325 to bring our corporate statutes in line with developments in general corporate law, and to better accommodate the changes in technology and the conduct of business.

SB 325 is based on the 2016 Revised Model Business Corporation Act, which is the product of the efforts of the Corporate Laws Committee of the American Bar Association beginning in 2010 to provide a comprehensive and full restatement of the Model Act. Professor Kristen Juras has already spoken on the hard work by members of the BETTR Section over the last three years to review and analyze the 2016 Model Act for adoption in Montana, as well as the general changes introduced by SB 325. I will focus the remainder of my testimony on the exciting improvements introduced by SB 325 in the corporate merger and share exchange statutes and the addition of the domestication and conversion provisions. I am particularly interested in this area because of my tax and business practice and my personal experiences and frustrations with the limitations of Montana's existing corporate statutes that end up costing Montana businesses.

First, SB 325 would adopt new domestication and conversion procedures. In a nutshell, a domestication is a transaction in which a corporation changes its state of incorporation. For example, a North Dakota corporation could become a Montana corporation (or vice versa) through a domestication. A conversion is a transaction in which an entity changes from one entity type to another. For example, a Montana corporation could become a Montana limited liability company (and vice versa) through a conversion. Because Montana's current corporate

statutes do not have these procedures, we have to use mergers to achieve a similar result, which are often more complicated and costly. SB 325's addition of the domestication and conversion procedures would provide a simpler and more direct means of changing a home state or entity type in Montana.

In addition, SB 325 would adopt several important enhancements to the corporate merger and share exchange statutes that provide greater flexibility and certainty, including the following –

- *Shareholder Approval of Mergers and Share Exchanges (Section 164(5))* – Under SB 325, the default rule for shareholder approval of mergers and share exchanges would be reduced to a majority of shareholders (compared to two-thirds under the existing Montana corporate statutes), with flexibility to increase the shareholder approval threshold and decrease the threshold (but not below approval by a majority quorum).
- *Two-Step Transactions (Section 164(10))* – SB 325 would authorize two-step transactions to proceed without a shareholder vote, where the first step involves an offer to shareholders to tender their shares for purchase in response to which enough shareholders tender so that, upon consummation of the offer, the offering party owns or has the right to acquire shares with sufficient voting power to satisfy the shareholder approval that would otherwise be required, and the second step is a merger or share exchange providing the remaining shareholders the same consideration as was offered in the first step.
- *Parent and Subsidiary Mergers (Section 165)* – SB 325 would expand the availability of the simplified, short-form merger procedure without the need for shareholder approval to include mergers between subsidiaries or mergers with a parent into a subsidiary (rather than just mergers of a subsidiary into a parent, as under the existing Montana corporate statute).
- *Cross-Species Mergers (Sections 162 and 163)* – Montana's existing corporate merger statues only authorize mergers and share exchanges between corporations. SB 325 would authorize mergers and share exchanges between corporations and another type of entity, such as a limited liability company. For example, a Montana corporation could merge with a Montana limited liability company. As noted above, SB 325 would also adopt a new conversion procedure as well, which would offer an even more simplified and direct means of accomplishing a conversion of a corporation to a limited liability company (and vice versa).

I am most excited about SB 325's addition of the conversion procedures and the authorization of cross-species mergers because the shortcomings of Montana's existing corporate statutes have resulted in additional cost and complexity to Montana businesses. The issue of merging or converting a corporation into another entity, such as a limited liability company, is not limited to big corporations, but adversely impacts our small Montana businesses as well. A Montana corporation may want to convert to a limited liability company for any number of reasons. For some, they may prefer a limited liability company for estate and business succession planning

reasons. For others, they may prefer a limited liability company for a more simplified business regime without the need for corporate formalities. In addition, some may prefer a limited liability company instead of a corporation in connection with a business sale or acquisition. Others may prefer a limited liability company to simplify and restructure corporate subsidiaries.

Whatever the reasons, Montana's existing corporate merger statute come up short because they only authorize mergers between two corporations, requiring more complicated and costly steps to accomplish what should be a simple conversion. For example, a conversion of a Montana corporation to a limited liability company under existing corporate statues generally would involve three steps: (1) forming a new corporation in a different state (such as Delaware or Wyoming) that authorizes a corporate conversion to a limited liability company; (2) merging the existing Montana corporation with the new corporation in the other state; and (3) converting the new corporation in the other state into a limited liability company.

The filing fees alone to effect a conversion of an existing Montana corporation in this manner can be significant. For example, if this type of conversion is effectuated in Delaware under the existing corporate statutes, the Delaware same day filing fees, franchise tax, and registered agent costs could exceed $1500, in addition to the Montana same day filing fees of $120. If we could effect the direct merger of a Montana corporation into a Montana limited liability company all in Montana, the current Montana one-hour expedited filing fees would total approximately $290. That is a significant difference in cost and complexities for Montana businesses.

I am pleased to say that SB 325 fixes this issue with Montana's existing corporate merger statutes by authorizing corporations to merger with unincorporated entities, such as limited liability companies, as well as adopting the new conversion procedures as an even more simplified and direct means of accomplishing a conversion. Together, these improvements should save Montana business unnecessary costs, spare Montana businesses from needless complexity and paperwork, and keep more Montana businesses organized in Montana.

For these reasons and more, I strongly support the adoption of SB 325 to modernize Montana's corporate statutes. On behalf of the BETTR Section of the Montana State Bar, I urge your Committee to vote yes on SB 325.

Thank you for your time and attention on this matter.

MINUTES

MONTANA SENATE
66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on March 22, 2019 at 8:30 AM, in Room 422 Capitol

ROLL CALL

Members Present:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Dee Brown, Vice Chair (R)
Sen. Sue Malek, Vice Chair (D)
Sen. Carlie Boland (D)
Sen. Jason W. Ellsworth (R)
Sen. Terry Gauthier (R)
Sen. Jason D. Small (R)
Sen. Frank Smith (D)
Sen. Gordon Vance (R)
Sen. Gene Vuckovich (D)

Members Excused: None

Members Absent: None

Staff Present: Linda Keim, Committee Secretary
Jameson Walker, Legislative Services Division

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 578, 3/15/2019; HB 579, 3/15/2019

Executive Action:
SB 325, Do Pass as Amended
SB 330, Do Pass as Amended
SB 335, Do Pass
SB 327, Tabled
SR 43, Be Adopted

08:31:45 Chairman Fitzpatrick

HEARING ON HB 579

Opening Statement by Sponsor:
08:32:59 Rep. Edward Buttrey (R), HD 21, opened the hearing on HB 579. Revise laws relating to gambling & player information.
EXHIBIT(bus59a01)

Proponents' Testimony:
08:38:40 Ronda Wiggers, Montana Coin Machine Operators
EXHIBIT(bus59a02)

08:41:19 Mike Lamphier, casino operator, Lewistown
EXHIBIT(bus59a03)

08:42:23 John Gies, owner, Lucky Seven Casino, Billings
08:43:44 Jerry Greybill, owner, casinos and sports bar, Billings
08:45:10 Kurt Shull, owner, Bay Bar Grill, Bozeman
08:46:25 Jason Blackford, independent operator, Rio Grande Casino, Billings
08:47:22 Keri Reisinger, casino operator
08:47:59 Clint Lohman, soft-ware system designer, Rewards LLC

Opponents' Testimony:
08:50:06 John Iverson, Montana Tavern Association (MTA)
08:57:17 Neil Peterson, Gaming Industry Association (GIA)
EXHIBIT(bus59a04)

Informational Testimony:
09:02:18 Matt Eckdahl, technical services, Gambling Control Division, Department of Justice

Questions from Committee Members and Responses:
09:02:44 Sen. Brown
09:04:50 Rep. Buttrey
09:05:04 Sen. Brown
09:06:05 Mr. Greybill, Billings
09:06:58 Sen. Brown
09:07:37 Mr. Lohman, Rewards LLC
09:07:58 Sen. Small
09:08:14 Rep. Buttrey
09:10:27 Sen. Ellsworth
09:11:03 Rep. Buttrey
09:11:39 Sen. Ellsworth
09:12:58 Mr. Lohman
09:13:09 Sen. Smith
09:13:40 Mr. Peterson, GIA
09:14:05 Chairman Fitzpatrick
09:18:38 Mr. Iverson, MTA

Closing by Sponsor:
09:22:25 Rep. Buttrey

09:22:33 Chairman Fitzpatrick

HEARING ON HB 578

Opening Statement by Sponsor:
09:23:32 Rep. Edward Buttrey (R), HD 21, opened the hearing on HB 578. Allow surplus lines insurance to cover certain disability situations.

Proponents' Testimony:
09:25:40 Bill Warden, National Association of Insurance Advisors (NAIA)

Opponents' Testimony: None

Informational Testimony:
09:26:53 Jeannie Keller, Insurance Bureau chief, Office of the Montana State Auditor, Commissioner of Securities and Insurance

Questions from Committee Members and Responses:
09:27:51 Sen. Brown
09:28:23 Rep. Buttrey
09:29:01 Sen. Malek
09:29:05 Mr. Warden, NAIA

Closing by Sponsor:
09:29:28 Rep. Buttrey

09:30:31 Chairman Fitzpatrick

Committee Business:
09:30:47 Chairman Fitzpatrick
09:32:31 Jameson Walker, Legislative Services Division (LSD)
09:33:39 Chairman Fitzpatrick

09:33:40 Recess
09:51:07 Reconvene

09:51:05 Chairman Fitzpatrick

EXECUTIVE ACTION ON SR 43

09:51:15 **Motion/Vote:** Sen. D. Brown moved that **SR 43 BE ADOPTED**. Motion carried 9-1 by voice vote with Sen. Vance voting no.

EXECUTIVE ACTION ON SB 325

09:52:08 **Motion:** Sen. D. Brown moved that **SB 325 DO PASS**.

09:52:20 **Motion:** Sen. Fitzpatrick moved that **SB 325 BE AMENDED**.
EXHIBIT(bus59a05)

Discussion:
09:52:27 Jameson Walker, Legislative Services Division (LSD)
EXHIBIT(bus59a06)

09:53:00 Sen. Boland
09:53:40 Chairman Fitzpatrick
09:53:41 Sen. Brown
09:53:55 Chairman Fitzpatrick
09:57:54 Sen. Boland
09:58:02 Chairman Fitzpatrick

09:59:16 **Vote:** Motion carried unanimously by voice vote.

09:59:28 **Motion:** Sen. D. Brown moved that **SB 325 DO PASS AS AMENDED**.

Discussion:
09:59:40 Sen. Boland
10:00:31 Sen. Brown
10:00:49 Sen. Vuckovich
10:01:04 Sen. Malek

10:01:29 **Vote:** Motion carried 9-1 by voice vote with Sen. Vance voting no.

EXECUTIVE ACTION ON SB 327

10:01:48 **Motion:** Sen. D. Brown moved that **SB 327 DO PASS**.

Discussion:
10:02:08 Sen. Malek
10:02:27 Sen. Brown
10:02:50 Sen. Boland

10:03:40 **Vote:** Motion failed 4-6 by roll call vote with Sen. Boland, Sen. Malek, Sen. F. Smith and Sen. Vuckovich voting aye.

10:04:44 **Motion/Vote:** Sen. D. Brown moved that **SB 327 BE TABLED**. Motion carried 8-2 by voice vote with Sen. Boland and Sen. Malek voting no.

10:05:38 Sen. Vuckovich
10:05:42 Chairman Fitzpatrick

EXECUTIVE ACTION ON SB 330

10:05:46 **Motion:** Sen. D. Brown moved that **SB 330 DO PASS**.

10:06:06 **Motion:** Sen. Fitzpatrick moved that **SB 330 BE AMENDED**.
EXHIBIT(bus59a07)

Discussion:
10:06:33 Jameson Walker, Legislative Services Division (LSD)
10:16:05 Chairman Fitzpatrick
10:16:10 Sen. Malek
10:16:27 Mr. Walker, LSD
10:16:51 Chairman Fitzpatrick
10:17:03 Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA)
10:17:27 Sen. Malek
10:17:47 Ms. Wiggers, MCMOA
10:17:53 Chairman Fitzpatrick

10:17:55 **Vote:** Motion carried unanimously by voice vote.

10:18:05 **Motion:** Sen. Malek moved that **SB 330 BE AMENDED**.
EXHIBIT(bus59a08)

Discussion:
10:18:31 Sen. Brown
10:18:52 Chairman Fitzpatrick

10:18:52 **Vote:** Motion carried 7-3 by roll call vote with Sen. Fitzpatrick, Sen. F. Smith and Sen. Vance voting no.

10:19:51 **Motion:** Sen. D. Brown moved that **SB 330 DO PASS AS AMENDED**.

Discussion:
10:20:16 Sen. Brown
10:21:44 Chairman Fitzpatrick
10:21:48 Sen. Ellsworth
10:22:43 Sen. Malek
10:24:14 Sen. Boland
10:24:34 Chairman Fitzpatrick
10:24:51 Sen. Brown

10:25:25 **Vote:** Motion carried 8-2 by roll call vote with Sen. D. Brown and Sen. Malek voting no.

EXECUTIVE ACTION ON SB 335

10:26:22 **Motion:** Sen. D. Brown moved that **SB 335 DO PASS**.

Discussion:
10:26:43 Sen. Boland

10:27:07 **Vote:** Motion carried unanimously by voice vote.

10:27:21 Chairman Fitzpatrick

Committee Business:
10:28:12 Sen. Ellsworth

10:28:21	Chairman Fitzpatrick
10:29:12	Sen. Brown
10:29:15	Sen. Vance
10:29:18	Sen. Malek
10:29:26	Chairman Fitzpatrick
10:29:48	Sen. Malek
10:29:56	Chairman Fitzpatrick
10:30:07	Sen. Brown
10:30:27	Chairman Fitzpatrick
10:30:29	Mr. Walker
10:30:47	Chairman Fitzpatrick
10:30:54	Sen. Brown
10:31:10	Chairman Fitzpatrick

ADJOURNMENT

Adjournment: 10:31 AM

_____
Linda Keim, Secretary

lk

Additional Documents:

EXHIBIT(bus59aad.pdf)

BUSINESS & LABOR
EXHIBIT NO. 5
DATE 3/22/2019
BILL NO. SB 325

Amendments to Senate Bill No. 325
1st Reading Copy

Requested by Senator Steve Fitzpatrick

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Jameson Walker
March 21, 2019 (5:33pm)

1. Title, page 2, line 4.
Strike: "AND"

2. Title, page 2, line 21.
Following: "MCA"
Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

3. Page 3, line 24.
Following: "filing"
Strike: ". Delivery may be made"

4. Page 3, line 25 through line 27.
Following: "electronic transmission"
Strike: remainder of line 25 through "document" on line 27
Insert: ". The secretary of state may authorize exceptions to the requirement of filing documents by electronic transmission"

5. Page 7, line 2.
Strike: "5"
Insert: "10"

6. Page 15, line 23.
Following: "subsection (10)."
Insert: "A corporation that files documents with the office of the secretary of state under [sections 1 through 221] is considered to have given its irrevocable consent to delivery of notices or other communications by the office of the secretary of state to the corporation by electronic transmission."

7. Page 35, line 30 through page 36, line 1.
Strike: ":" on page 35, line 30 through "(a)" on page 36, line 1

8. Page 36, line 1.
Following: "registered office"
Strike: ", which may be the same as any of its places of business;"

9. Page 36, line 2.
Strike: "(b)"

10. Page 36, line 2 through line 6.
Following: "registered agent" on line 2
Strike: remainder of line 2 through "business in this state" on line 6
Insert: "in compliance with Title 35, chapter 7"

11. Page 36, line 10.
Strike: "(1)"

12. Page 36, line 11 through line 26.
Following: "registered agent" on line 11
Strike: remainder of line 11 through "notified of the change" on line 26
Insert: "in compliance with Title 35, chapter 7"

13. Page 36, line 28.
Strike: "(1)"

14. Page 36, line 29 through page 37, line 15.
Following: "corporation" on line 29
Strike: remainder of line 29 on page 36 through "standing" on page 37, line 15
Insert: "in compliance with Title 35, chapter 7"

15. Page 76, line 30.
Following: "the care that a person in a"
Strike: "similar"
Insert: "like"

16. Page 80, line 18.
Following: "(b) with the care that a person in a"
Strike: "similar"
Insert: "like"

17. Page 83, line 18.
Following: "believed to be in the"
Strike: "best"

18. Page 85, line 8 through line 9.
Strike: ":" on line 8 through "(i)" on line 9

19. Page 85, line 9.
Strike: ";"

20. Page 85, line 10.
Strike: "(ii)"
Following: "even if"
Insert: ", in either case,"

21. Page 149, line 17.
Strike: "taxes,"

22. Page 149, line 19.
Strike: "60"
Insert: "120"

23. Page 149, line 27 through line 28.
Strike: "If the" on line 27 through "determines that" on line 28
Insert: "On or before September 1 of each year, the secretary of state shall compile a list of corporations for which"

24. Page 149, line 28.
Following: "dissolving a corporation,"
Insert: "and"

25. Page 150, line 18.
Following: "have been eliminated;"
Insert: "and"

26. Page 150, line 19 through line 21.
Following: "[section 39]"
Strike: remainder of line 19 through "paid" on line 21
Following: line 21
Insert: "(2) The corporation shall submit with its application for reinstatement:
(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;
(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and
(c) all annual reports not yet filed with the secretary of state and related fees and penalties."
Renumber: subsequent subsections

27. Page 150, line 22.
Following: "information"
Insert: ", documents, and fees"

28. Page 150, line 23.
Strike: "subsection (1)"
Insert: "subsections (1) and (2)"
Following: "information"
Strike: "is"
Insert: ", documents, and fees are complete and"

29. Page 156, line 19.
Following: "(3)"
Strike: "The"

Insert: "Except as provided in subsection (4), the"

30. Page 156, line 21.
Following: line 20
Insert: "(4) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to register to do business as required under [section 207(4)] is voidable by the state, the contracting state agency, or the contracting political subdivision."
Renumber: subsequent subsections

31. Page 158, line 7.
Following: "isolated transaction that"
Insert: "is completed within 30 days and that"
Strike: "similar"
Insert: "repeated"
Following: "transactions"
Insert: "of a similar nature"

32. Page 158, line 13.
Following: line 12
Insert: "(4) A foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must register to do business under [sections 203 through 214] before entering into the contract. This subsection does not apply to contracts for goods fully prepared or services fully performed out of state for delivery or use in this state."

33. Page 161, line 23.
Strike: "60"
Insert: "120"

34. Page 161, line 30 through page 162, line 3.
Strike: subsection (2) in its entirety
Insert: "(2) On or before September 1 of each year, the secretary of state shall compile a list of registered foreign corporations for which one or more grounds exist under subsection (1) for terminating its registration and shall serve the registered foreign corporation with written notice of the determination under [section 45]."

35. Page 162, line 4.
Following: "(3)"
Insert: "If the registered foreign corporation does not correct each ground for termination or demonstrate to the reasonable satisfaction of the secretary of state that each ground for

termination determined by the secretary of state does not exist within 60 days after the notice is delivered, the secretary of state may terminate the registration of a registered foreign corporation by issuing a certificate of termination."

36. Page 162, line 4 through line 5.
Strike: ":" on line 4 through "(a)" on line 5

37. Page 162, line 5.
Strike: "90"
Insert: "60"

38. Page 162, line 6.
Strike: "copy of the certificate of termination"
Insert: "notice"

39. Page 162, line 6 through line 7.
Following: "subsection (2)(b)" on line 6
Strike: remainder of line 6 through "subsection (1)" on line 7

40. Page 162, line 9 through line 11.
Following: "certificate of termination" on line 9
Strike: "unless before" on line 9 through "withdrawn" on line 11

41. Page 168, line 22 through line 25.
Following: "in writing" on line 22
Strike: "and return" on line 22 through "timely filed" on line 25
Insert: ". The corrected report must be filed by April 15 to be considered timely filed"

42. Page 219, line 24.
Following: line 23
Insert: "NEW SECTION. **Section 274. {standard} Effective date.** [This act] is effective June 1, 2020."
Renumber: subsequent sections

- END -

BUSINESS & LABOR
EXHIBIT NO. 6
DATE 3/22/2019
BILL NO. SB 325

MEMORANDUM

Date: March 15, 2019
To: Jameson Walker, Sen. Fitzpatrick
From: Kristen G. Juras
Re: Proposed Amendments to SB 325 (Revised Montana Business Corporation Act)

Following are the proposed amendments to SB 325 that have been prepared based upon conversations with the office of the secretary of state and a final review of SB 325 by the BETTR Section of the Montana State Bar. The secretary of state's office has reviewed and approved the proposed amendments.

Proposed amendment to section 3(9) (Requirements for Documents, p. 3)(the other subsections of section 3 are not amended)

(9) The document must be delivered to the office of the secretary of state for filing. ~~Delivery may be made~~ by electronic transmission. The secretary of state may authorize exceptions to the requirement of filing documents by electronic transmission. ~~if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document.~~

Explanation: The secretary of state is transitioning to an entirely electronic transmission system and no longer intends to accept delivery of hard copies of documents. Its electronic transmission system allows the uploading of customized documents. Under Section 13, the secretary of state may promulgate rules regarding the format of any uploaded documents (such as a requirement that an uploaded document must be typewritten or printed).

Proposed amendment to section 8(3) (Filing Duty, p. 7)(the other subsections of section 8 are not amended)

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within ~~5~~10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

Explanation: Although the secretary of state usually has a response time of 5 days or less, in rush periods (such as the April 15 deadline for annual reports) it may require up to 10 days to respond to each document filed. Ten days is provided under current law.

Proposed amendment to Section 15(4)(Notices, p. 15)(the other subsections of section 15 are not amended)

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10). Any corporation that files documents with the office of the secretary of state under [Sections 1 through 221] will be considered to have given its irrevocable consent to delivery of notices or other communications by the office of the secretary of state to the corporation by electronic transmission.

Explanation: This amendment was not requested by the secretary of state but by the BETTR section after review of the final version of the bill. The comments to section 8.42 of the Model Act from which this section is derived specifically discuss "like position" and distinguish it from "similar circumstances." To the extent a court refers to official comments to help it interpret and apply the provisions of the Act, we believe it would be beneficial to use the same language as the Model Act, especially when a term such as "like position" is specifically discussed and illustrated.

Proposed amendment to section 120(2)(Permissible indemnification)(the other subsections of section 120 are not amended)

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the ~~best~~ interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

Explanation: This amendment was not requested by the secretary of state but by the BETTR section after review of the final version of the bill. This subsection provides a standard for directors with regard to employee benefit plans. The comments to section 8.51 of the Model Act from which this section is derived make it clear that the use of "interests" (without best) with regard to employee benefit plans is intentional and incorporates the federal standard that applies to ERISA plans.

Proposed amendment to section 123(1)(Court-ordered indemnification)(other subsections of section 123 are not amended)

(1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to 1 the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) to indemnify the director; or

(ii) to advance expenses to the director even if, in the case of either (i) or (ii), the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 13 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

Explanation: This amendment was not requested by the secretary of state but by the BETTR section after review of the final version of the bill. The addition is necessary to clarify that the final clause ("even if...") applies to both subsection(i) and (ii).

Proposed amendment to section 193

Section 193. Grounds for administrative dissolution. The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, ~~taxes,~~ interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

Explanation: To avoid the cost of redesigning its current system, the secretary of state has requested that the Act maintain current rules governing administrative dissolutions of domestic corporations.

With regard to administrative dissolution for failure to pay taxes, procedures are already set forth under chapter 15, title 31. If a domestic corporation fails to pay a tax or file a return, the department of revenue files a notice of suspension with the secretary of state (MCA 15-31-523). During the period of suspension, the domestic corporation may not file any documents with the secretary of state other than its annual report. To remove the suspension, the domestic corporation must pay taxes and file an application for reviver with the secretary of state under MCA 15-31-524. If taxes remain unpaid for five years, the department of revenue notifies the secretary of state and the secretary of state must dissolve the corporation. MCA 15-31-523.

With regard to administrative dissolutions for failure to file an annual report, under current law the department does not send out notices until September 1, so we have amended the bill to refer to a 120 day period for filing annual reports after the April 15 due date.

Proposed amendment to section 194

Section 194. Procedure for and effect of administrative dissolution. (1) On or before September 1 of each year, the secretary of state shall compile a list of corporations for which ~~If the secretary of state determines that~~ one or more grounds exist under [section 193] for dissolving a corporation~~,~~ and the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Explanation: To avoid the cost of redesigning its current system, the secretary of state has requested that the Act maintain current rules governing administrative dissolutions of domestic corporations. Under current law (MCA 35-6-104), letters are sent on September 1 to all domestic corporations that have not filed annual reports or appointed registered agents. If corrective action is not taken within 90 days, the secretary of state sends out a notice of administrative dissolution on November 1.

Proposed amendment to section 195

Section 195. Reinstatement following administrative dissolution. (1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) state that the corporation's name satisfies the requirements of [section 39]. ~~; and~~

~~(d) contain a certificate from the department of revenue reciting that all taxes imposed pursuant to Title 15 have been paid.~~

(2) The corporation must submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state and related fees and penalties.

(~~2~~3) If the secretary of state determines that the application contains the information, documents, and fees required by subsections (1) and (2) and that the information, documents, and fees are complete and ~~is~~ correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

(34) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Explanation: To avoid the cost of redesigning its current system and to avoid loss of revenue, the secretary of state has requested that the Act maintain current rules governing administrative dissolutions of domestic corporations. The amendment adds language allowing the secretary of state to prescribe a filing fee for an application for reinstatement and requiring all outstanding annual reports be filed and related fees paid before reinstatement. The corporation must also file a certificate from the department of revenue that all taxes have been paid (which was in the first draft of the bill but we've moved it from subsection 1 to new subsection 2).

Proposed amendment to Section 204 (Registration to do business in this state, p. 156)

(1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) Except as provided in subsection (4), tThe failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to register to do business as required under [section 207(4)] is voidable by the state, the contracting state agency, or the contracting political subdivision.

(45) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

(56) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through 214].

Explanation: To avoid a loss of revenue, the office of the secretary of state requested that the new Act contain the existing requirements of 35-1-1026(4) and 35-1-1027(6), which generally require foreign corporations that enter into contracts with the State of Montana or its agencies or political subdivisions to register to do business in Montana and if they fail to do so, the contract is voidable by the State or its agency or political subdivision.

Proposed amendment to Section 207(Activities not constituting doing business, pp.157-158)

(1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not in the course of repeated ~~similar~~ transactions of a similar nature;

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

(4) A foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must register to do business under [section 205] before entering into the contract. This subsection (4) does not apply to contracts for goods fully prepared or services fully performed out of state for delivery or use in this state.

Explanation: The secretary of state receives several phone calls from foreign corporations with questions as to whether the foreign corporation must register to do business for a short-term, isolated project. The certainty of advising them of a specific, 30-day safe-harbor period is beneficial to both the secretary of state and the foreign corporation.
To avoid a loss of revenue, the office also requested that the new Act contain a similar provision to 35-1-1026(4), which specifically requires foreign corporations that enter into contracts with the State of Montana to register to do business (other than for contracts for goods or services prepared out of state for delivery or use in the state).

Proposed amendment to section 213 (Administrative termination of [registered foreign] corporation)

Section 213. Administrative termination of registration. (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, ~~taxes,~~ interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) ~~The secretary of state may terminate the registration of a registered foreign corporation by:~~

~~(a) filing a certificate of termination; and~~

~~(b) delivering a copy of the certificate of termination to the foreign corporation's registered agent or, if the foreign corporation does not have a registered agent, to the foreign corporation's principal office.~~ On or before September 1 of each year, the secretary of state shall compile a list of registered foreign corporations for which one or more grounds exist under subsection (1) for terminating its registration and shall serve the registered foreign corporation with written notice of the determination under [section 45].

(3) If the registered foreign corporation does not correct each ground for termination or demonstrate to the reasonable satisfaction of the secretary of state that each ground for termination determined by the secretary of state does not exist within 60 days after the notice is delivered, the secretary of state may terminate the registration of a registered foreign corporation by issuing a certificate of termination. The certificate of termination must state:

(a) the effective date of the termination, which must be not less than ~~90~~60 days after the secretary of state delivers the ~~copy of the certificate of termination~~ notice as prescribed in subsection (2)~~(b)~~; and

(b) the grounds for termination under subsection (1).

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination. ~~unless before that date the foreign corporation cures each ground for termination stated in the certificate of termination. If the foreign corporation cures each ground, the secretary of state shall file a statement that the certificate of termination is withdrawn.~~

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

Explanation: To avoid the cost of redesigning its current system, the secretary of state has requested that the Act maintain current rules governing administrative dissolutions of foreign registered corporations. Under current law (MCA 35-1-1039), letters are sent on September 1 to all foreign registered corporations that have not filed annual reports or appointed a registered agent. These notices advise the corporations that termination of registration will occur if corrective action is not taken within 60 days. If corrective action is not taken by October 30, the secretary of state issues a certificate of termination.

Proposed amendment to section 221(5)(Annual reports, p. 168)

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing. The corrected report must be filed by April 15 to be considered timely filed. ~~and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the notice from the secretary of state becomes effective as determined in accordance with [section 15], it is considered timely filed.~~

Explanation: To avoid the cost of reconfiguring its system and to avoid lost revenues, the secretary of state requested that any corrected reports must be filed by April 15 as currently required. As under current law, any corrected reports filed after April 15 will incur late filing fees.

Proposed New Section 275 (effective date)

Section 275. [Sections 1 through 274] shall become effective June 1, 2020.

Explanation: To allow it sufficient time to implement the changes provided in this Act, the office of the secretary of state has requested a delayed effective date of June 1, 2020 (after the April 15, 2020 annual report filing deadline). The office will be required to make changes to its system and its forms to implement the Act, and needs sufficient time to develop and test these changes prior to implementing them for its customers.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on April 5, 2019 at 8:30 AM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Vince Ricci, Vice Chair (R)
Rep. Sharon Stewart Peregoy, Vice Chair (D)
Rep. Fred Anderson (R)
Rep. Willis Curdy (D)
Rep. Neil Duram (R)
Rep. Ross H. Fitzgerald (R)
Rep. Bruce Grubbs (R)
Rep. Steve Gunderson (R)
Rep. Derek J. Harvey (D)
Rep. Joel G. Krautter (R)
Rep. Denley M. Loge (R)
Rep. Andrea Olsen (D)
Rep. Christopher Pope (D)
Rep. Katie Sullivan (D)
Rep. Sue Vinton (R)

Members Excused:

Rep. Edward Buttrey (R)
Rep. Moffie Funk (D)
Rep. Gordon Pierson Jr (D)

Members Absent: None

Staff Present: Joanne Kauzlarich, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 325, 4/2/2019; SB 330, 4/2/2019; SB 351,4/2/2019; SB 358, 4/2/2019

08:32:47 Chair Noland

HEARING ON SB 330

Opening Statement by Sponsor:
08:34:52 Sen. Mark Blasdel (R), SD 4, opened the hearing on SB 330, Authorize sports gambling act.

Proponents' Testimony:
08:37:16 Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA)
08:48:38 Travis Woltermann, Golden Entertainment, Montana Coin Machine Operators Association (MCMOA)
08:50:05 John Iverson, Montana Tavern Association (MTA)
08:53:25 Neil Peterson, Gaming Industry Association (GIA)

Committee Business:
08:56:05 Rep. Curdy
08:56:18 Rep. Harvey
08:56:33 Rep. Curdy
08:56:41 Sen. Blasdel
08:57:30 Chair Noland
08:57:38 Sen. Blasdel
08:57:58 Chair Noland

Opponents' Testimony: None

Informational Testimony:
08:58:39 Angela Nunn, Department of Justice (DOJ)
08:59:36 Chair Noland
08:59:40 Angela Nunn, DOJ
08:59:51 Brad Longcake, Montana Council On Problem Gambling (MCPG)

Questions from Committee Members and Responses:
09:00:59 Rep. Curdy
09:01:32 Rep. Funk joined the meeting.
09:01:57 Angela Nunn, DOJ
09:03:40 Rep. Curdy
09:04:16 Angela Nunn, DOJ
09:05:28 Rep. Curdy
09:05:33 Chair Noland
09:05:46 Rep. Curdy
09:05:55 Vice Chair Ricci
09:06:24 John Iverson, MTA
09:06:36 Vice Chair Ricci
09:06:47 John Iverson, MTA
09:07:18 Vice Chair Ricci
09:07:29 John Iverson, MTA
09:07:49 Vice Chair Ricci
09:08:08 Brad Longcake, MCPG

09:08:46 Rep. Loge
09:09:21 Sen. Blasdel
09:11:05 Chair Noland
09:11:32 Brad Longcake, MCPG
09:12:30 Rep. Vinton
09:12:57 Sen. Blasdel
09:13:50 Rep. Krautter
09:14:49 Angela Nunn, DOJ
09:16:24 Rep. Krautter
09:16:36 Angela Nunn, DOJ
09:16:57 Rep. Pope
09:17:44 Angela Nunn, DOJ
09:19:27 Rep. Harvey
09:20:06 Ronda Wiggers, MCMOA
09:21:13 Rep. Olsen
09:21:37 Angela Nunn, DOJ
09:22:01 Rep. Olsen
09:22:09 Angela Nunn, DOJ
09:22:23 Rep. Olsen
09:23:10 Ronda Wiggers, MCMOA
09:25:19 Rep. Olsen
09:25:48 Ronda Wiggers, MCMOA
09:26:30 Rep. Curdy
09:27:24 Rep. Pierson joined the meeting.
09:27:35 Angela Nunn, DOJ
09:27:48 Rep. Curdy
09:28:34 Angela Nunn, DOJ
09:30:57 Vice Chair Ricci
09:31:46 John Iverson, MTA
09:33:50 Rep. Krautter
09:34:24 Angela Nunn, DOJ
09:35:44 Chair Noland
09:35:55 Ronda Wiggers, MCMOA

Closing by Sponsor:
09:38:34 Sen. Blasdel

09:40:41 Chair Noland ceded the gavel to Vice Chair Ricci.

HEARING ON SB 351

Opening Statement by Sponsor:
09:40:54 Sen. Jason Ellsworth (R), SD 43, opened the hearing on SB 351, Revise State Fund board composition and term requirements.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:
09:43:25 Kevin Braun, Montana State Fund (MSF)

Questions from Committee Members and Responses:
09:43:45 Rep. Olsen
09:44:15 Sen. Ellsworth
09:45:44 Rep. Olsen
09:45:54 Sen. Ellsworth
09:47:05 Rep. Olsen
09:47:13 Kevin Braun, MSF
09:47:49 Chair Ricci
09:48:00 Sen. Ellsworth

Closing by Sponsor:
09:48:12 Sen. Ellsworth

HEARING ON SB 325

Opening Statement by Sponsor:
09:49:36 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 325, Create the Montana Business Corporation Act.

Proponents' Testimony:
09:53:20 Kristen Juras, Montana State Bar (MTSB)
EXHIBIT(buh71a01)
EXHIBIT(buh71a02)

10:01:25 Vincent Kalafat, Montana State Bar (MTSB)
EXHIBIT(buh71a03)

10:03:59 Joe DeFilippis, Secretary of State's Office (SOS)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
10:05:34 Rep. Noland
10:05:49 Rep. Duram
10:06:12 Sen. Fitzpatrick
10:07:39 Rep. Duram
10:08:03 Sen. Fitzpatrick
10:08:24 Rep. Sullivan
10:09:26 Vincent Kalafat, MTSB
10:10:20 Rep. Sullivan
10:10:32 Vincent Kalafat, MTSB

Closing by Sponsor:
10:11:06 Sen. Fitzpatrick

10:14:22 Recessed
10:26:56 Reconvened

HEARING ON SB 358

Opening Statement by Sponsor:
10:27:17 Sen. Terry Gauthier (R), SD 40, opened the hearing on SB 358, Revise resort area alcoholic beverage license laws.

Proponents' Testimony:
10:29:54 John Iverson, Montana Tavern Association (MTA)
10:32:48 Bob Miller, Liquor Store Owners Association of Montana (LSOAM)
10:34:23 Kristi Blazer, Montana Beer and Wine Distributors Association (MBWDA).
10:35:34 Mark Taylor, Self

Opponents' Testimony:
10:36:49 Ileana Indreland, Self
EXHIBIT(buh71a04)

10:40:03 Michael DeLaney, Self
EXHIBIT(buh71a05)

10:48:05 Michael Lawlor, Self
EXHIBIT(buh71a06)

Informational Testimony:
10:52:03 Becky Schlauch, Department of Revenue (DOR)

Questions from Committee Members and Responses:
10:52:52 Rep. Loge
10:53:17 Becky Schlauch, DOR
10:53:33 Rep. Loge
10:53:44 Becky Schlauch, DOR
10:54:16 Rep. Grubbs
10:54:36 Sen. Gauthier
10:55:03 John Iverson, MTA
10:55:42 Rep. Grubbs
10:55:49 John Iverson, MTA
10:56:11 Rep. Curdy
10:56:31 Mark Taylor, Self

Closing by Sponsor:
10:57:11 Sen. Gauthier

Committee Business:
10:58:14 Rep. Loge
10:58:20 Chair Noland

ADJOURNMENT

Adjournment:
10:59:17

_____
Joanne Kauzlarich, Secretary

jk

Additional Documents:

EXHIBIT(buh71aad.pdf)

EXHIBIT 1
DATE 4.5.2019
SB 325

Memorandum

Date: April 5, 2019
To: House Business and Labor Committee Members
From: Kristen G. Juras, Business Committee Chair
Business, Estate, Trust, Tax, and Real Property (BETTR) Section of Montana State Bar
Re: SB 325: Revisions to Montana Business Corporation Act

The existing Montana Business Corporation Act was enacted 28 years ago in 1991, before the widespread use of electronic communications and the explosive growth of interstate commerce driven by the internet. The 1991 legislation was based upon the American Bar Association's 1984 Model Business Corporation Act. The Model Business Corporation Act has been amended by the American Bar Association (ABA) many times since its promulgation in 1984. Montana has adopted only a handful of those amendments.

In 2010, the ABA began a thorough review and revision of the Model Act and its official comments. This effort resulted in the adoption and publication of the 2016 Revision of the Model Business Corporation Act. The 2016 Revision is based on the 1984 version upon which Montana law is based and incorporates most of the amendments to the Model Act adopted thereafter. It has eliminated inconsistent terminology and outdated provisions.

In 2016, members of the Business, Estate, Trust, Tax, and Real Property (BETTR) Section of the Montana State Bar and several law school professors began studying the 2016 Revision of the Model Business Corporation Act for potential adoption in Montana. We have worked closely with the Business Services Division of the Secretary of State's office.

These efforts culminated in SB 325, which is based upon the American Bar Association's 2016 Revision of the Model Business Corporation Act. We have carefully reviewed the 2016 Model Act with current Montana law and have made several variations from the Model Act that we felt best represented Montana corporate practice. As one simple example, we have kept Montana's long-standing April 15 deadline for filing annual reports rather than adopting the Model Act's due date of April 1. Variations to language of the Model Act were also made during the legislative drafting process in compliance with the Montana Legislative Services Division's Bill Drafting Manual, none of which are intended to be substantive. A separate memorandum will be submitted into the record outlining the more important substantive variations of SB 325 from the 2016 Model Business Corporation Act, with a brief explanation of the reasoning behind the variation.

Each section of the 2016 Model Business Corporation Act is followed by an official comment that amplifies and explains the purpose, rationale, and operation of the statute, often giving examples. Although the official comments are not incorporated into SB 325, it is the intent of the drafters of SB 325 that the Montana courts refer to the official comments to resolve any ambiguities in the interpretation or application of the provisions of SB 325 to the extent the

official comments refer to provisions of the 2016 Model Business Corporation Act that have not been substantively modified by SB 325.

SB 325 has been endorsed by the BETTR Section of the State Bar, comprised of more than 200 attorneys practicing business law in the state, and the Montana State Bar Board of Trustees. Most of the substantive provisions of corporate law remain the same. SB 325 introduces several improvements to Montana's Business Corporation Act, including provisions that facilitate electronic filings and communications, statutory procedures for correction of "defective" corporate actions, clearer standards of conduct for directors and officers, and new rules that greatly simplify mergers between corporations and other types of entities, such as limited liability companies.

Although many of the provisions of SB 325 set forth default rules for the governance of a corporation, these default rules may be modified by shareholders or directors in the corporation's governing documents. Some provisions of SB 325 set forth mandatory rules that may not be modified, such as the provisions providing shareholders the right to review certain corporate documents (section 216(6)).

Following is a summary of the **major changes** that SB 325 makes to current corporate law.

Sections 1 through 26: General Provisions

- The general provisions contained in sections 1 through 26 have been amended to accommodate the use of electronic means to transmit and file various corporate documents and to incorporate terminology from the Uniform Electronic Transmissions Act adopted by the Montana legislature in 2001 (MCA §§ 30-18-101 et seq.)
- Section 3(9) requires documents to be filed with the office of the secretary of state electronically. The secretary of state may authorize exceptions to the electronic filing requirement.
- Section 3(11) provides rules for incorporating into documents "extrinsic facts" ascertainable outside of filed documents. For example, a provision of the articles of incorporation may establish an interest rate based on the interbank loan rate established by the Federal Open Market Committee.
- Section 14 adds several new definitions to clarify the application of various provisions of the Act, including definitions related to electronic records and transmissions.
    - Section 15 allows communications and notices to be transmitted electronically and specifies rules governing electronic transmissions, including a requirement that the parties must consent to the use of electronic transmissions for notices.
    - All corporations who have filed documents electronically with the secretary of state are considered to have given irrevocable consent to receive electronic transmissions from the secretary of state.

- Sections 19 to 26 provide new procedures that allow for the ratification of defective corporate actions.

Sections 27-34: Incorporation

- Section 34 specifically authorizes the use of forum selection clauses for "internal corporation claims" in Articles of Incorporation. For example, a Montana corporation that operates in Conrad, Montana may establish in its articles of incorporation or bylaws the Pondera County district court as the venue for bringing claims against its directors for breach of fiduciary duty.
- Section 34 prohibits mandatory arbitration of internal corporation claims.

Sections 35-45: Purposes and Powers; Corporate Name; Office and Agent

- No major changes from existing law.

Sections 46-60: Shares and Distributions

- Section 57 adds as a proper subject for a shareholders' agreement an agreement to alter, restrict or eliminate the application of section 201, a new provision granting to the corporation and other shareholders an election to purchase shares of a shareholder who files a petition for judicial dissolution.

Sections 61-92: Shareholders

- Currently, 10% of shareholders may demand a special shareholders' meeting. Section 62 permits a provision in the articles of incorporation setting a higher or lower percentage than 10%, but no higher than 25%.
- Currently, shareholders may act by written consent in lieu of a shareholder meeting only if unanimous. Section 64 now authorizes a corporation to add to its articles of incorporation a provision allowing shareholder action by consent if signed by holders of outstanding shares having not less than the minimum number of votes necessary to authorize the action if it were voted on at a meeting. Absent such a provision in the articles, unanimous written consent is still required.
- Section 78 changes the current default rule of cumulative voting for directors to non-cumulative voting unless the articles state otherwise.
- Section 91 provides a procedure allowing shareholders to seek appointment of a receiver or custodian where directors are deadlocked or threatening irreparable harm to the corporation, or if directors are acting fraudulently and irreparable injury is threatened. Under prior law, a custodian or receiver could only be appointed in connection with a judicial dissolution proceeding.
- Section 92 establishes a procedure for judicial resolution of disputes with respect to directors or officers, committee members, or the results or validity of shareholder votes.

Sections 93-133: Directors and Officers

- Section 94 clarifies the scope and operation of any qualifications for directors adopted by a corporation in its articles of incorporation or bylaws.
- Section 95 eliminates the restriction that the size of the board cannot be increased or decreased by more than 30% without shareholder approval.
- Section 98 allows staggered terms for any size board, eliminating the current restriction that staggered terms are only allowed for boards of nine or more directors.
- The standards of conduct for directors contained in section 111 have not been significantly changed. However, as a result of some court decisions that have confused standards of conduct for directors with standards of liability for directors, section 112 has been added to clarify that there is a separate and distinct standard of liability for directors. Not all breaches of a Section 111 standard of care necessarily lead to director liability.
- The standards of conduct for officers established under Section 116 has been amended to apply to all officers, rather than just those with "discretionary authority" under prior law, and clarifies an officer's right to delegate. Section 116(4) explains that an officer's breach of a standard of conduct does not necessarily lead to liability and refers to the principles of section 112 for the standard of liability.
- Section 122 has amended procedures governing the advancement of expenses to a director or officer under the indemnification provisions of the Act.
- Section 133 provides approval mechanisms and safe-harbors for directors considering involvement in a business opportunity that might be deemed to be a corporate opportunity.

Sections 134-148: Domestication and Conversion

- Sections 134-148 add new, simplified procedures (i) for changing the state of incorporation and (ii) for converting unincorporated entities into corporations and corporations into unincorporated entities. A separate memorandum prepared by Vincent Kalafat discusses these provisions in more detail.

Sections 149-160: Amendment of Articles and Bylaws

- Under existing law, the default rule requires an amendment to the articles of incorporation on which shareholders are entitled to vote to be approved by two-thirds of the shareholders entitled to vote on the amendment (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 151 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for approval of amendments to a majority of the shareholders entitled to vote (an absolute majority). Section 151 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of

no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

- Section 160 enables corporations to change the plurality vote default rule for the election of directors through amendments to its bylaws or articles of incorporation. Under current law, a change from plurality voting can only be authorized in the articles of incorporation.

Sections 161-168: Mergers and Share Exchanges

- Under existing law, the default rule requires a merger or share exchange to be approved by two-thirds of the shareholders entitled to vote on the merger or share exchange (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 164 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for approval of mergers and share exchanges to a majority of the shareholders entitled to vote (an absolute majority). Section 164 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 169-170: Disposition of Assets

- Under existing law, the default rule requires a sale of assets outside of the ordinary course of business to be approved by two-thirds of the shareholders entitled to vote on the disposition (an absolute two-thirds vote). The articles of incorporation may increase or decrease the required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 170 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for approval of dispositions to a majority of shareholders entitled to vote thereon (an absolute majority vote). Section 170 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Chapter 171-183: Appraisal (or Dissenter's) Rights

- No major changes from existing law.

Sections 184-202: Dissolution

- Under existing law, the default rule requires a voluntary corporate dissolution to be approved by two-thirds of the shareholders entitled to vote on the dissolution (an absolute two-thirds vote). The articles of incorporation may increase or decrease the

required vote but may not reduce the required vote to less than a majority of the shareholders entitled to vote (an absolute majority vote). Section 185 reduces the current default rule of an "absolute" two-thirds shareholder voting requirement for dissolution to a majority of shareholders entitled to vote thereon (an absolute majority vote). Section 185 allows the articles of incorporation to increase or decrease the vote required, with a minimum threshold of a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

- Section 190 adds procedures regarding the disposition of unknown claims against a corporation that voluntarily dissolves, including a 3-year period after publication of a notice of dissolution within which a proceeding to enforce an unknown claim generally must be filed.
- Chapter 6 of Title 35 currently provides rules governing involuntary administrative dissolution if a domestic corporation fails to file required reports or is otherwise not in compliance with the Act. For domestic profit corporations, these administrative dissolution procedures have been moved from chapter 6, title 35 to sections 193-195 of the Montana Business Corporation Act. The current procedures and time frames for administrative dissolution of domestic corporations have been retained.
    - As under current law (MCA 35-6-104), letters are sent on September 1 to all domestic corporations that have not filed annual reports or otherwise are not in compliance with the Act. If corrective action is not taken within the following 90 days, the secretary of state sends out a notice of administrative dissolution on December 1. A corporation may seek reinstatement within 5 years of the notice of dissolution if it complies if it satisfies certain conditions, including filing an application for reinstatement and all delinquent annual reports.
- Section 201 is a new provision allowing the corporation or other shareholders an option to purchase the shares of a shareholder who petitions for dissolution. The articles of incorporation, bylaws, or a shareholder's agreement (as referenced in section 57) may alter, eliminate, or restrict these statutory buy-out provisions. For example, a shareholder's agreement may provide a purchase price and method of payment that applies in the event a shareholder petitions for judicial dissolution or it may eliminate the election to purchase in the event a shareholder petitions for judicial dissolution.

Sections 203-214: Foreign Corporations

- As under current law, section 204 requires a foreign corporation to register to do business with the Montana secretary of state before transacting business in Montana. However, SB 325 has changed certain terms relating to foreign corporations, including new references to a "certificate of registration" rather than a "certificate of authority" and "termination of registration" rather than "revocation of a certificate of authority."

- Section 207 sets forth activities that are not considered "transacting business" in Montana and do not require registration of a foreign corporation. These provisions remain the same as under current law.
- Section 213 provides rules governing the secretary of state's termination of a foreign corporation's registration. The current procedures and time frames for administrative dissolution of domestic corporations have been retained.
    - As under current law (MCA 35-1-1039), letters are sent on September 1 to all registered foreign corporations that have not filed annual reports or otherwise are not in compliance with the Act. If corrective action is not taken within the following 60 days, the secretary of state sends out a notice of administrative dissolution on November 1.

Sections 215-221: Records and Reports

- Section 219 grants to directors the right to inspect certain corporate records.
- Under current law, annual reports must be filed by April 15. If the annual report contains an error or is not complete, the secretary of state returns it to the corporation. Any corrections to the annual report must be filed by April 15 to be considered timely.

Sections 222-269: Amendment of Other Statutory Provisions; Repealer

- Sections 222 through 268 revise other statutes to refer to the new code sections and for consistency with the provisions of SB 325.
- Section 269 repeals the existing Montana Business Corporation Act codified at title 35, chapter 1.

Sections 270-274: Transition Provisions; Effective Date

- Section 270 applies the provisions of SB 325 to all domestic corporations in existence upon its effective date.
- Section 271 provides codification instructions.
- Section 272 is a savings clause that preserves any pending actions or rights accrued before the effective date.
- Section 273 makes any invalid provisions of SB 325 severable.
- Section 274 clarifies that any foreign corporations that have registered prior to the effective date do not need to re-register.
- Effective date: To allow it sufficient time to implement the changes provided in this Act, the office of the secretary of state has requested a delayed effective date of June 1, 2020 (after the April 15, 2020 annual report filing deadline). The office will be required to make changes to its system and its forms to implement SB 325 and needs sufficient time to develop and test these changes prior to implementing them for its customers.

EXHIBIT 2
DATE 4.5.2019
SB 325

Memorandum

Date: April 5, 2019
To: House Business and Labor Committee Members
From: Kristen G. Juras, Business Committee Chair
Business, Estate, Trust, Tax, and Real Property (BETTR) Section of Montana State Bar
Re: Variations in SB 325 from the 2016 ABA Model Business Corporation Act

This Memorandum supplements my Memorandum of April 5, 2019 explaining the general purposes of SB 325 and its revision of the Montana Business Corporation Act. SB 325 is based upon the American Bar Association's 2016 Revision of the Model Business Corporation Act. A task force of comprised of members of the Business, Estate, Trust, Tax, and Real Property (BETTR) Section of the Montana State Bar, law school professors, and members of the Business Services Division of the office of the secretary of state have worked together to draft SB 325. We did not adopt the 2016 Revision of the Model Business Corporation Act wholesale. We have carefully reviewed the 2016 Model Act with current Montana law and have made several substantive variations from the Model Act that we felt best represented Montana corporate practice. The purpose of this memorandum is to identify and explain the most important of those variations.

Variations to language of the Model Act were also made during the legislative drafting process in compliance with the Montana Legislative Services Division's Bill Drafting Manual. The drafting changes made in compliance with the Bill Drafting Manual are not intended to be substantive.

The section numbers used in SB 325 have been altered and do not correspond to the section numbers used in the 2016 Revision of the Model Business Corporation Act. For example, section 5 of SB 325 corresponds to Section 1.22 of the 2016 Model Act.

<u>Sections 1-26 Variations from Model Act (General Provisions)</u>

- Section 5 of SB 325 varies from corresponding section 1.22 of the 2016 Model Act, which contains a list of fees for various filings, statements, and other secretary of state services. As under current law, section 5 of SB 325 does not list fees but instead allows the secretary of state to set fees to be published in the Administrative Rules of Montana, thus avoiding the need for legislative action to change fees.
- Section 8 of SB 325 varies from corresponding section 1.25 of the 2016 Model Act, which sets forth the filing duties of the secretary of state. Consistent with current Montana law, section 8(5) was added to SB 325 to allow the secretary of state to correct errors in UCC financing statements caused by a filing officer.
- Rather than adopting the penalties for false documents set forth in section 1.29 of the 2016 Model Act, Section 12 of SB 325 uses the existing language of MCA § 35-1-428(1)

regarding penalties for false statements contained in any documents filed with the secretary of state, and a warning about the penalty for false statements on any forms provided by the secretary of state.

- Consistent with current law, Section 13(2) of SB 325 adds a provision clarifying that the secretary of state may adopt rules necessary to perform his or her duties, including establishing fees. This language is not contained in corresponding Section 1.30 of the 2016 Model Act.
- Section 14 of SB 325 alters some of the definitions contained in Section 1.40 of the 2016 Model Act.
    - We have clarified that "expenses" includes attorneys' fees.
    - We have added limited liability partnerships and limited liability limited partnerships to the organizations identified as "unincorporated entities."

Sections 39-41 Variations from Model Act (Corporate Name)

- Consistent with existing law, section 39 of SB 325 has added subsection (2)(h) (which does not appear in section 4.01 of the 2016 Model Act) requiring a corporate name to be distinguishable from any assumed business name, trademark, or service mark registered with the secretary of state.
- Consistent with existing law, section 39 of SB 325 has added subsection (4) (which does not appear in section 4.01 of the 2016 Model Act) to expand the instances in which a corporation can use a name that is not otherwise distinguishable in connection with mergers, reorganizations and acquisitions or with permission of the other entity.
- Consistent with existing law, section 39(2) provides a 120-day grace period after the effective date of a dissolution before the name of a dissolved entity becomes available to another entity. This provision is not found in section 4.01 of the 2016 Model Act.

Sections 42-45 Variations from Model Act (Office and Agent)

- Because Montana has adopted the Montana Registered Agents Act (title 35, chapter 7) that applies consistent rules to registered agents of all incorporated and unincorporated entities registered with the secretary of state, sections 42-45 of SB 325 incorporate where appropriate the provisions of the Montana Registered Agents Act and eliminate inconsistent provisions contained in sections 5.01, 5.02 and 5.03 of the 2016 Model Act.

Sections 46-60 Variations from Model Act (Shares and Distributions)

- Section 57 of SB 325 allows shareholder agreements to alter, restrict or eliminate the new procedure under section 201 of SB 325 that provides an election to purchase shares of a shareholder who files a petition for judicial dissolution. Section 14.34 of the 2016 Model Act is silent as to whether the buy-out procedures in a judicial dissolution may be altered by agreement, and we believed it was best to clarify that shareholders do have the right to alter the provisions of section 201 by agreement.

Sections 93-133 Variations from Model Act (Directors and Officers)

- Section 97 of SB 325 clarifies corresponding Section 8.05 of the 2016 Model Act by specifically allowing the bylaws to vary the default rule that an appointment to a director vacancy expires at the next shareholders' meeting (allowing, for example, the appointee to complete the remaining 2 years of a 3-year term).
- Section 104 of SB 325 clarifies corresponding section 8.20 of the 2016 Model Act by allowing directors to request distribution of minutes to directors.
- Section 112 of SB 325 is a new section that establishes standards of liability for directors. At common law, the courts have developed the business judgment rule that protects directors from liability if they satisfy the elements of the business judgment rule. Corresponding Section 8.31 of the 2016 Model Act does not mention the business judgment rule, and we have added language to Section 112 clarifying that it does not intend to eliminate or alter the application of the business judgment rule.
- Section 117 of SB 325 allows an officer's resignation to simply be submitted to the "corporation" rather than specifying (as does corresponding Section 8.43 of the 2016 Model Act) one or more specific persons to whom it must be delivered.
- Section 119 provides definitions that apply to sections 119-128 of SB 325 governing indemnification of directors and officers. We clarify the definitions of corresponding Section 8.50 of the 2016 Model Act as follows:
    - Clarify that "corporations" include predecessor entities;
    - Provide separate definitions for "director" and "officer" rather than combining them as the Model Act does;
    - Include attorney's fees in the definition of "liability."

Sections 134-148 Variations from Model Act (Domestication and Conversion)

- Consistent with current law, section 135 of SB 325 excludes certain corporations from the domestication and conversion provisions, including banks, trust companies, building and loan associations, credit unions, and insurance companies. Corresponding section 9.02 of the 2016 Model Act contemplates that each state adopting the Act may exclude from the domestication and conversion provisions corporations regulated under different statutes.
- Section 135 of SB 325 also clarifies that these procedures do not apply to corporations that convert to a benefit corporation under MCA § 35-1-1407.
- Section 145 of SB 325 requires approval of a plan of conversion by a majority of shareholders entitled to vote on the plan (an absolute majority). Corresponding section 9.32 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the plan. Section 145 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold

of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 149-160 Variations from Model Act (Amendment of Articles and Bylaws)

- Section 151 of SB 325 requires approval of any amendments to the articles of incorporation that shareholders are entitled to vote on by a majority of shareholders entitled to vote on the amendment (an absolute majority). Corresponding section 10.03 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the amendment. Section 151 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 161-168 Variations from Model Act (Mergers and Share Exchanges)

- Section 164 of SB 325 requires approval of any merger or share exchange by a majority of shareholders entitled to vote on the merger or exchange (an absolute majority). Corresponding section 11.04 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the amendment. Section 164 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.
- Section 165 of SB 325 adds a provision to corresponding Section 11.05 of the 2016 Model Act Merger clarifying that although shareholders do not need to vote on mergers between parents and subsidiaries, the corporation must provide notice of any mergers or share exchanges with subsidiaries or between subsidiaries to shareholders, including a copy of the plan or a summary of the plan and a statement that the entire plan may be obtained upon request.

Sections 169-170 Variations from Model Act (Disposition of Assets)

- Section 170 of SB 325 requires approval of any disposition of assets outside of the ordinary course of business by a majority of shareholders entitled to vote on the disposition (an absolute majority). Corresponding section 12.02 of the 2016 Model Act establishes a default rule of a majority of a quorum of shareholders entitled to vote on the amendment. Section 170 allows a corporation to increase or decrease the required vote in its articles of incorporation, with a minimum threshold of no less than a majority of a quorum, subject to Section 75(3), which specifies a minimum quorum of at least a majority of shareholders.

Sections 184-202 Variations from Model Act (Dissolution)

- Section 190 of SB 325 and corresponding section 14.07 of the 2016 Model Act provide procedures for the disposition of unknown claims against a corporation at the time it dissolves. Section 190 provides that in lieu of a publication in a newspaper (the only method prescribed in corresponding section 14.07), a dissolving corporation may elect to publish notice of dissolution on its website for 30 consecutive days. Section 190 also specifies that claims are barred within three years of the first date of publication.
- Sections 193-194 of SB 325 retain existing procedures and time frames for the administrative dissolution of domestic corporations, and have altered corresponding language in corresponding sections 14.01 and 14.02 of the 2016 Model Act to achieve that result.
- Consistent with current law, section 195 of SB 325 provides a five-year period within which to apply for reinstatement rather than the two-year period provided by corresponding section 14.22 of the 2016 Model Act. Section 195 also retains similar reinstatement procedures as provided under existing law.
- Section 201 of SB 325 provides a new procedure in judicial dissolutions that allows a corporation or other shareholders to purchase the shares of a shareholder seeking judicial dissolution. Section 201 clarifies corresponding section 14.34 of the 2016 Model Act by stating that the term "fair value" used in section 201 has the same definition as that term is used in determining "fair value" under section 171 governing appraisal rights. The purpose is to avoid any confusion as to whether valuation discounts may be used to determine "fair value" under section 201 – they may not.
- Section 201 of SB 325 also references the ability of shareholders to enter into an agreement under section 57 that alters, eliminates, or restricts the buy-out provisions of Section 201.

Sections 203-214 Variations from Model Act (Foreign Corporations)

- Section 205 of SB 325 adds a provision to corresponding 15.03 of the 2016 Model Act requiring a foreign corporation to state in its application for registration that the corporation has complied with the laws of its jurisdiction and is in existence in that jurisdiction.
- Section 207 of SB 325 retains existing provisions of Montana law describing activities that do not constitute transacting business in Montana rather than adopting the language of corresponding Section 15.05 of the 2016 Model Act. Foreign corporations contracting to provide goods or services to the State of Montana must register with the secretary of state unless the goods are fully prepared or services fully performed outside of Montana.

Sections 215-221) Variations from Model Act (Records and Reports)

- Section 221 of SB 325 retains the current due date of April 15 for annual reports rather than adopting the April 1 due date proposed under 16.21 of the 2016 Model Act.

EXHIBIT 3
DATE 4-5-2019
SB 325

Memorandum

Date: April 5, 2019
To: House Business and Labor Committee Members
From: Vincent G. Kalafat, Member of the Business Committee
Business, Estate, Trust, Tax, and Real Property (BETTR) Section of Montana State Bar
Re: Domestication, Conversion, and Merger Provisions of SB 325 (Revisions to Montana Business Corporation Act)

Montana's existing corporate statutes in Title 35, Chapter 1, were enacted in 1991 largely based on the 1984 Revised Mode Business Corporation Act from the American Bar Association. When Montana originally adopted the Model Act in 1991, the Internet was still in its infancy, e-mail was just beginning to gain steam, and the use of real-time video communications like we now have at our fingertips with FaceTime and Skype was largely limited to the area of sci-fi. In addition to the significant technology developments, the conduct of business and general corporate law has changed dramatically since 1991. The American Bar Association has promulgated amendments to the Model Act, but Montana has fallen behind in keeping up with those changes. SB 325 is based on the 2016 Model Business Corporation Act, which is the product of the efforts of the Corporate Laws Committee of the American Bar Association beginning in 2010 to provide a comprehensive and full restatement of the Model Act. Now is the perfect opportunity for Montana to adopt SB 325 to bring our corporate statutes in line with developments in general corporate law, and to better accommodate the changes in technology and the conduct of business.

The separate memoranda prepared by Professor Kristen Juras discuss the major changes that SB 325 would make to current Montana corporate law and the substantive variations in SB 325 from the 2016 Model Business Corporation Act from the American Bar Association. This memorandum focuses on the new domestication and conversion provisions that would be added by SB 325 and the exciting improvements introduced by SB 325 in the corporate merger and share exchange statutes. I am particularly interested in this area because of my tax and business practice and my personal experiences and frustrations with the limitations of Montana's existing corporate statutes that end up costing Montana businesses.

First, SB 325 would adopt new domestication and conversion procedures. In a nutshell, a domestication is a transaction in which a corporation changes its state of incorporation. For example, a North Dakota corporation could become a Montana corporation (or vice versa) through a domestication. A conversion is a transaction in which an entity changes from one entity type to another. For example, a Montana corporation could become a Montana limited liability company (and vice versa) through a conversion. Because Montana's current corporate statutes do not have these procedures, we have to use mergers to achieve a similar result, which are often more complicated and costly. SB 325's addition of the domestication and conversion procedures would provide a simpler and more direct means of changing a home state or entity type in Montana.

In addition, SB 325 would adopt several important enhancements to the corporate merger and share exchange statutes that provide greater flexibility and certainty, including the following –

- *Shareholder Approval of Mergers and Share Exchanges (Section 164(5))* – Under SB 325, the default rule for shareholder approval of mergers and share exchanges would be reduced to an absolute majority of shareholders (compared to an absolute two-thirds under existing Montana corporate statutes), with flexibility to increase the shareholder approval threshold and decrease the threshold (but not below approval by a majority quorum).

- *Two-Step Transactions (Section 164(10))* – SB 325 would authorize two-step transactions to proceed without a shareholder vote, where the first step involves an offer to shareholders to tender their shares for purchase in response to which enough shareholders tender so that, upon consummation of the offer, the offering party owns or has the right to acquire shares with sufficient voting power to satisfy the shareholder approval that would otherwise be required, and the second step is a merger or share exchange providing the remaining shareholders the same consideration as was offered in the first step.

- *Parent and Subsidiary Mergers (Section 165)* – SB 325 would expand the availability of the simplified, short-form merger procedure without the need for shareholder approval to include mergers between subsidiaries or mergers with a parent into a subsidiary (rather than just mergers of a subsidiary into a parent, as under the existing Montana corporate statute).

- *Cross-Species Mergers (Sections 162 and 163)* – Montana's existing corporate merger statues only authorize mergers and share exchanges between corporations. SB 325 would authorize mergers and share exchanges between corporations and another type of entity, such as a limited liability company. For example, a Montana corporation could merge with a Montana limited liability company. As noted above, SB 325 would also adopt a new conversion procedure, which would offer an even more simplified and direct means of accomplishing a conversion of a corporation to a limited liability company (and vice versa).

I am most excited about SB 325's addition of the domestication and conversion procedures and the authorization of cross-species mergers because the shortcomings of Montana's existing corporate statutes have resulted in additional cost and complexity to Montana businesses. The issue of merging or converting a corporation into another entity, such as a limited liability company, is not limited to big corporations, but adversely impacts our small Montana businesses as well. A Montana corporation may want to convert to a limited liability company for any number of reasons. For some, they may prefer a limited liability company for estate and business succession planning reasons. For others, they may prefer a limited liability company for a more simplified business regime without the need for corporate formalities. In addition, some may prefer a limited liability company instead of a corporation in connection with a business sale or

acquisition. Others may prefer a limited liability company to simplify and restructure corporate subsidiaries.

Whatever the reasons, Montana's existing corporate merger statute come up short because they only authorize mergers between two corporations, requiring more complicated and costly steps to accomplish what should be a simple conversion. For example, a conversion of a Montana corporation to a limited liability company under existing corporate statues generally would involve three steps: (1) forming a new corporation in a different state (such as Delaware or Wyoming) that authorizes a corporate conversion to a limited liability company; (2) merging the existing Montana corporation with the new corporation in the other state; and (3) converting the new corporation in the other state into a limited liability company.

The filing fees alone to effect a conversion of an existing Montana corporation in this manner can be significant. For example, if this type of conversion is effectuated in Delaware under the existing corporate statutes, the Delaware same day filing fees, franchise tax, and registered agent costs could exceed $1500, in addition to the Montana same day filing fees of $120. If we could effect the direct merger of a Montana corporation into a Montana limited liability company all in Montana, the current Montana one-hour expedited filing fees would total approximately $290. That is a significant difference in cost and complexities for Montana businesses.

I am pleased to say that SB 325 fixes this issue with Montana's existing corporate merger statutes by authorizing corporations to merger with unincorporated entities, such as limited liability companies, as well as adopting the new conversion procedures as an even more simplified and direct means of accomplishing a conversion. Together, these improvements should save Montana business unnecessary costs, spare Montana businesses from needless complexity and paperwork, and keep more Montana businesses organized in Montana.

For these reasons and more, I strongly support the adoption of SB 325 to modernize Montana's corporate statutes. On behalf of the BETTR Section of the Montana State Bar, I urge your Committee to vote yes on SB 325.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on April 9, 2019 at 8:30 AM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Vince Ricci, Vice Chair (R)
Rep. Sharon Stewart Peregoy, Vice Chair (D)
Rep. Fred Anderson (R)
Rep. Edward Buttrey (R)
Rep. Neil Duram (R)
Rep. Ross H. Fitzgerald (R)
Rep. Bruce Grubbs (R)
Rep. Steve Gunderson (R)
Rep. Denley M. Loge (R)
Rep. Gordon Pierson Jr (D)
Rep. Christopher Pope (D)
Rep. Katie Sullivan (D)
Rep. Sue Vinton (R)

Members Excused:

Rep. Willis Curdy (D)
Rep. Moffie Funk (D)
Rep. Derek J. Harvey (D)
Rep. Joel G. Krautter (R)
Rep. Andrea Olsen (D)

Members Absent: None

Staff Present: Joanne Kauzlarich, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Executive Action: SB 325, SB 330, SB 351, SB 358

08:32:35 Chair Noland
08:34:09 Rep. Funk joined the meeting.

Committee Business:
08:33:54 Chair Noland
08:34:02 Rep. Ricci
08:34:14 Chair Noland
08:34:32 Rep. Ricci
08:34:37 Chair Noland
08:35:13 Pat Murdo, Legislative Services Division (LSD)
EXHIBIT(buh74a01)
EXHIBIT(buh74a02)
EXHIBIT(buh74a03)

08:41:00 Chair Noland
08:41:03 Rep. Fitzgerald

08:41:30 Recessed
09:08:10 Reconvened

EXECUTIVE ACTION ON SB 325

09:08:43 **Motion/Vote:** Rep. Ricci moved that **SB 325 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy. Rep. Krautter will carry the bill.

EXECUTIVE ACTION ON SB 330

09:10:10 **Motion:** Rep. Ricci moved that **SB 330 BE CONCURRED IN**.

09:10:25 **Motion:** Rep. Ricci moved that **SB 330 BE AMENDED**.
(See Exhibit 1)

Discussion:
09:10:45 Rep. Vinton
09:11:00 Pat Murdo, LSD

09:11:14 **Vote:** Motion carried unanimously by voice vote. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy.

09:11:38 **Motion/Vote:** Rep. Ricci moved that **SB 330 BE CONCURRED IN AS AMENDED.** Motion carried unanimously by voice vote. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy. * Rep. Lynch will carry the bill.

* It was decided on the audio record that Rep. Buttrey would carry the bill, but later changed to Rep. Lynch.

EXECUTIVE ACTION ON SB 351

09:13:16 **Motion/Vote:** Rep. Ricci moved that **SB 351 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy. Rep. Ricci will carry the bill.

EXECUTIVE ACTION ON SB 358

09:14:22 **Motion:** Rep. Ricci moved that **SB 358 BE CONCURRED IN.**

09:14:40 **Motion:** Rep. Pope moved that **SB 358 BE AMENDED.**
(See Exhibit 3)

Discussion:
09:15:04 Rep. Pope
09:15:54 Rep. Grubbs
09:16:39 Rep. Buttrey

09:17:13 **Vote:** Motion failed 7-12 by roll call vote with Rep. Funk, Rep. Grubbs, Rep. Olsen, Rep. Pope, Rep. Stewart Peregoy, Rep. Sullivan and Rep. Vinton voting aye. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy.

09:19:01 **Motion:** Rep. Buttrey moved that **SB 358 BE AMENDED**.
(See Exhibit 2)

Discussion:
09:19:13 Rep. Buttrey

09:20:10 **Vote:** Motion carried 17-2 by voice vote with Rep. Pierson and Rep. Pope voting no. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy.

09:20:54 **Motion/Vote:** Rep. Ricci moved that **SB 358 BE CONCURRED IN AS AMENDED**. Motion carried 18-1 by voice vote with Rep. Pope voting no. Rep. Curdy, Rep. Duram, Rep. Harvey, Rep. Pierson and Rep. Sullivan voted by proxy. Rep. Buttrey will carry the bill.

ADJOURNMENT

Adjournment: 09:22:09

Joanne Kauzlarich, Secretary

jk

Additional Documents:

EXHIBIT(buh74aad.pdf)